FEDERAL REGISTER

Vol. 78 Tuesday,

No. 73 April 16, 2013

Pages 22411–22766

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, May 14, 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

Contents

Federal Register

Vol. 78, No. 73

Tuesday, April 16, 2013

Separate Parts In This Issue

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.

Rules and Regulations

Federal Register
Vol. 78, No. 73
Tuesday, April 16, 2013

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–12–0006]

RIN 0563–AC39

Common Crop Insurance Regulations; Florida Citrus Fruit Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulation that was published Friday, December 21, 2012. The regulation pertains to the insurance of Florida Citrus Fruit.

DATES: Effective April 16, 2013.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections revised the Florida Citrus Fruit Crop Insurance Provisions that published on Friday, December 21, 2012, (74 FR 75509–75521), effective January 22, 2013.

Need For Correction

As published, the final regulation contained errors that may prove to be misleading and need to be clarified. In section 7(a) the word ''a'' was not removed with the other deleted text in this section. Additionally, several references in section 10(d) were incorrect in the final rule and must be corrected for the calculation to work as intended.

List of Subjects in 7 CFR Part 457

Crop insurance, Florida citrus fruit, Reporting and recordkeeping requirements. Correction of Publication.

Accordingly, 7 CFR part 457 is amended by making the following correcting amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

§ 457.107 [Amended]

■ 2. Amend § 457.107 as follows:
■ a. In section 7(a) by removing the word ''a'' following the phrase ''that prohibit insurance attaching to'';
■ b. In section 10(d)(3) by removing the term ''10(b)(2)'' and adding the term ''10(d)(2)'' in its place; and
■ c. In section 10(d)(5) by removing the term ''10(b)(3)'' and adding the term ''10(d)(3) in its place and by removing the term ''10(b)(4)'' and adding the term ''10(d)(4)'' in its place.

Signed in Washington, DC, on April 5, 2013.

Barbara Leach,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–08846 Filed 4–15–13; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2011–0221]

RIN 3150–AJ05

List of Approved Spent Fuel Storage Casks: HI-STORM 100, Amendment No. 8; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: On February 17, 2012 (77 FR 9515), the U.S. Nuclear Regulatory Commission (NRC) published a direct final rule amending its spent fuel storage regulations by revising the Holtec International, Inc. (Holtec) HI-STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 8 to Certificate of Compliance (CoC) No. 1014. The direct final rule was effective on May 2, 2012 (77 FR 24585; April 25, 2012). The NRC has made non-substantive corrections to the technical specifications (TS) and the NRC's Safety Evaluation Report (SER) for the Holtec HI-STORM 100 Cask System, Amendment No. 8. The purpose of this document is to provide notification that the NRC is amending its regulations by revising the Holtec HI-STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include notification that Amendment No. 8 to CoC No. 1014 was corrected on November 16, 2012.

DATES: This rule is effective May 16, 2013.

ADDRESSES: Please refer to Docket ID NRC–2011–0221 when contacting the NRC about the availability of information for this final rule. You may access information related to this final rule, which the NRC possesses and is publicly available, by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (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: John Goshen, P.E., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3325, email: *John.Goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 2012, the NRC received a request from Holtec by electronic mail to correct minor and non-substantive errors in Appendix A, ''Technical Specifications for the HI-STORM 100 Cask System,'' and Appendix B, ''Approved Contents and Design Features for the HI-STORM 100 Cask System,'' of CoC No. 1014. Holtec also identified errors in the NRC staff's SER. Holtec's requested corrections to the affected documents are to ensure consistency with the analyses and Final Safety Analysis Report (FSAR). The NRC has determined that the proposed TS and SER changes are being made to correct multiple revision bars in Appendices A and B of the TSs, and correcting several values in the NRC staff's SER that were previously approved by the NRC as part of the Holtect HI-STORM 100 Cask System rulemaking package approving Amendment No. 8 (77 FR 24585; April 25, 2012). The NRC staff inadvertently introduced the errors in the SER narrative. In some instances the NRC staff incorrectly referenced values or other references from the FSAR that had limited bearing on the staff's evaluation and did not affect the staff's conclusions because when the staff performed its evaluation and confirmatory conclusions the correct values were used. In some instances, typographical errors were made in the final document. In several instances language was revised to provide additional clarity. The NRC corrected the TSs and SER on November 16, 2012 (ADAMS Accession No. ML12213A170).

II. Section-by-Section Analysis

10 CFR 72.214

The effective date for Amendment No. 8 to CoC No. 1014 is revised to include notification that Amendment No. 8 was corrected on November 16, 2012 (ADAMS Accession No. ML12213A170).

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comments requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest because it will have no substantive impact, are technical in nature, and relate only to management, organization, procedure, and practice. The Commission is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish this amendment as a final rule. The amendment is effective May 16, 2013. This amendment does not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the revision previously stated because the revision is administrative in nature and does not change substantive requirements under the regulations. Specifically, the NRC is revising the Holtec HI-STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include notification that Amendment No. 8 to CoC No. 1014 was corrected on November 16, 2012 (ADAMS Accession No. ML12213A170).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2), which excludes from a major action rules which are corrective or of minor nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

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

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the non-substantive change in this final rule does not constitute backfitting, and therefore a backfit analysis is not included. The revision is non-substantive in nature: revising the Holtec HI-STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include notification that Amendment No. 8 to CoC No. 1014 was corrected on November 16, 2012 (ADAMS Accession No. ML12213A170). The change imposes no new requirements and makes no substantive change to the regulations. The revision does not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting. Therefore, a backfit analysis was not prepared.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. Nuclear Waste Policy Act 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K is also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate No.: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170).

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI-STORM 100.

* * * * *

Dated at Rockville, Maryland, this 10th day of April, 2013.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2013–08889 Filed 4–15–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1247; Airspace Docket No. 12–ANM–27]

Amendment of Class E Airspace; Omak, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Omak Airport, Omak, WA. Decommissioning of the Nondirectional Radio Beacon (NDB) has made this action necessary. This action also makes a minor change to the legal description in reference to the Class E airspace extending upward from 4,500 feet Mean Sea Level (MSL). This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Omak, WA (78 FR 5151). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

The FAA's Aeronautical Products Office requested the legal description for the Class E airspace extending upward from 4,500 feet MSL be rewritten for clarity. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface and 1,200 feet above the surface at Omak Airport, Omak, WA. The Omak NDB navigation aid is being decommissioned and, therefore, removed from the legal description. The size and shape of the airspace will remain the same by using the Airport Reference Point in describing the airspace. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Omak Airport, Omak, WA.

Environmental Review

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

that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and 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.

* * * * *

ANM WA E5 Omak, WA [Amended]

Omak Airport, WA

(Lat. 48°27′52″ N., long. 119°31′05″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Omak Airport, and within 1.8 miles each side of the 177° bearing of the Omak Airport extending from the 4.3-mile radius to 7.5 miles south of the airport; that airspace extending upward from 1,200 feet above the surface within 6.1 miles east and 8.7 miles west of the 177° and 357° bearings of the Omak Airport extending from 6.5 miles north to 17.9 miles south of the airport; that airspace extending upward from 4,500 feet MSL beginning at lat. 48°00′00″ N., long. 118°36′04″ W.; to lat. 47°45′00″ N., long. 118°36′04″ W.; to lat. 47°45′00″ N., long. 120°00′04″ W.; to lat. 48°00′00″ N., long. 120°00′04″ W.; to lat. 48°00′00″ N., long. 119°35′04″ W.; to lat. 48°09′46″ N., long. 119°36′06″ W.; to lat. 48°10′14″ N., long. 119°23′05″ W.; to lat. 48°00′00″ N., long. 119°22′24″ W., thence to the point of origin; that airspace extending upward from 8,500 feet MSL bounded on the north by the U.S./Canadian border, on the east by long. 119°00′04″ W., on the south by lat. 47°59′59″ N., and on the west by a line from lat. 47°59′59″ N., long. 120°30′04″ W.; to lat. 49°00′00″ N., long. 120°00′04″ W.

Issued in Seattle, Washington, on April 4, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–08814 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1195; Airspace Docket No. 12–AWP–7]

Amendment of Class E Airspace; Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Reno/Tahoe International Airport, Reno, NV. Decommissioning of the Compass Locator at the Instrument Landing System Middle Marker (LMM) and the Middle Marker (MM) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Reno, NV (78 FR 5153). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6003 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated at an extension to Class C surface areas for Reno/Tahoe International Airport, Reno, NV. Airspace reconfiguration is necessary due to the decommissioning of the LMM and MM navigation aids. The Airport Reference Point is used to describe the airspace instead of the LMM and the MM navigational aids. There is no change to the current configuration of the controlled airspace area. Also, the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Reno/Tahoe International Airport, Reno, NV.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially

significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6003 Class E Airspace Designated as an Extension to Class C Surface Areas.

* * * * *

AWP NV E3 Reno, NV [Amended]

Reno/Tahoe International Airport, NV
(Lat. 39°29′57″ N., long. 119°46′05″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Reno/Tahoe International Airport 360° bearing extending from the 5-mile radius of the airport to 12 miles north of the airport, and within 1.8 miles each side of the Reno/Tahoe International Airport 180° bearing extending from the 5-mile radius of the airport to 10.5 miles south of the airport.

Issued in Seattle, Washington, on April 2, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–08810 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0853; Airspace Docket No. 12–ANM–23]

Amendment of Class E Airspace; Astoria, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Astoria Regional Airport, Astoria, OR, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On October 9, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Astoria, OR (77 FR 61306). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The Western Flight Procedures Office reassessed the proposal and on January 25, 2013, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to also modify the north extension west of Astoria Regional Airport, Astoria, OR (78 FR 5325). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. This action modifies the north extension west of the airport from within 6 miles north to within 11 miles north of the airport 268° degree bearing. The airspace extension will accommodate missed approach holding for RNAV (GPS) standard instrument approach procedures. This will add a small area of airspace 700 feet above the surface to the west of Astoria Regional Airport, Astoria, OR.

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 designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Astoria Regional Airport, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. Also, to accommodate the modified procedure design missed approach holding for the RNAV (GPS) standard instrument approach procedure the FAA has added Class E airspace extending upward from 700 feet above the surface to the west of Astoria Regional Airport. Extending from the airport 268° bearing to 17.5 miles west, the airspace is changed from within 6 miles north of the 268° bearing to 11 miles north. Except for the airspace modification mentioned above, this rule is the same as published in the NPRM. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with

prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Astoria Regional Airport, Astoria, OR.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and 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.

* * * * *

ANM OR E5 Astoria, OR [Modified]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N., long. 123°52′43″ W.)
Seaside Municipal Airport
(Lat. 46°00′54″ N., long. 123°54′28″ W.)

That airspace extending from 700 feet above the surface within a 7-mile radius of Astoria Regional Airport; and within 11 miles north and 8.3 miles south of the Astoria Regional Airport 268° bearing extending from the 7-mile radius to 17.5 miles west of Astoria Regional Airport, excluding the portion within a 1.8-mile radius of Seaside Municipal Airport; and within 4 miles northeast and 8.3 miles southwest of the Astoria Regional Airport 326° bearing extending from the 7-mile radius to 21.4 miles northwest of Astoria Regional Airport; and within 4 miles each side of the Astoria Regional Airport 096° bearing extending from the 7-mile radius to 12 miles east of Astoria Regional Airport; and within 8.3 miles north and 4 miles south of the Astoria Regional Airport 096° bearing from 12 miles east, to 28.3 miles east of Astoria Regional Airport; and within a 15.9-mile radius of Astoria Regional Airport extending clockwise from the 326° bearing to the 347° bearing of the airport; and within a 23.1-mile radius of Astoria Regional Airport extending clockwise from the 347° bearing to the 039° bearing of the airport extending from the 15.9-mile radius to a 23.1-mile radius of Astoria Regional Airport extending clockwise from the airport 039° bearing to the airport 185° bearing.

Issued in Seattle, Washington, on April 2, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–08825 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket FAA No. FAA–2013–0283; Airspace Docket No. 13–AWP–3

Amendment of Class E Airspace; St. Helena, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action changes the name of the heliport listed in the Class E airspace for St. Helena, CA. St. Helena Fire Department Heliport has been changed to Napa County Fire Department Heliport, St. Helena, CA. This action does not change the boundaries of the airspace.

DATES: Effective date, 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

The FAA's Aeronautical Products Office requested the change to the airport name of Napa County Fire Department Heliport, St. Helena, CA.

The 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 Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by changing the airport name described in Class E airspace extending upward from 700 feet above the surface at St. Helena, CA, to Napa County Fire Department Heliport, formerly St. Helena Fire Department Heliport. Accordingly, since this is an administrative change and does not involve a change in the dimensions or operation requirements of that airspace, notice and public procedure under 5 U.S.C. 553 (b) are unnecessary.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends

controlled airspace at Napa County Fire Department Heliport, St. Helena, CA.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and 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.

* * * * *

AWP CA E5 St. Helena, CA [Amended]

Napa County Fire Department Heliport, CA,
Point In Space Coordinates
(Lat. 38°32′21″ N., long. 122°29′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Point In Space Coordinates serving the Napa County Fire Department Heliport.

Issued in Seattle, Washington, on April 4, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–08826 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1254; Airspace Docket No. 12–ANM–28]

Modification of Class E Airspace; Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Lakeview, OR, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Lakeview County Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also corrects the airport name.

DATES: Effective date, 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Lakeview, OR (78 FR 5155). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace extending upward from 700 feet above the surface at Lakeview County Airport, Lakeview, OR, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. Also, the airport formerly called Lakeview Airport is changed to Lakeview County Airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Lakeview County Airport, Lakeview, OR.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and 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.

* * * * *

ANM OR E5 Lakeview, OR [Modified]

Lakeview County Airport, OR
(Lat. 42°09′40″ N., long. 120°23′57″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Lakeview County Airport, and within 1.8 miles each side of the 180° bearing of the airport extending from the 4.3-mile radius to 7 miles south of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 42°50′00″ N., long. 120°57′00″ W.; to lat. 42°54′00″ N., long. 120°22′00″ W.; to lat. 41°23′00″ N., long. 119°52′00″ W.; to lat. 41°17′00″ N., long. 120°25′00″ W.; to lat. 41°41′00″ N., long. 120°41′00″ W., thence to the point of beginning; that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00′00″ N., on the east by a line extending from lat. 44°00′00″ N., long. 120°00′04″ W., to the north edge of V–122 at long. 119°00′04″ W., on the south by the north edge of V–122, and on the west by the east edge of V–165.

Issued in Seattle, Washington, on April 2, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–08812 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 5, 9, 11, 31, 40, 41, 140, 145, 170, 171 and 190

RIN 3038–AE03

Reassignment of Commission Staff Responsibilities and Delegations of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to reflect the reassignment of responsibilities, including delegations of authority, resulting from its recent reorganization of Commission staff. Effective October 9, 2011, the Commission abolished the Division of Clearing and Intermediary Oversight and reassigned its staff and responsibilities to the newly established Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.

DATES: These amendments shall become effective on April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Frank Fisanich, Chief Counsel, Telephone: (202) 418–5949, Email: *ffisanich@cftc.gov,* Amanda Lesher Olear, Special Counsel, Telephone: (202) 418–5283, Email: *aolear@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; or Robert Wasserman, Chief Counsel, Telephone: (202) 418–5092, Email: *rwasserman@cftc.gov,* Jocelyn Partridge, Special Counsel, Telephone: (202) 418–5926, Email: *jpartridge@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[1] which extensively revises the Commodity Exchange Act.[2] In order to more effectively implement its provisions, the Commission has reorganized its operating divisions. Under the reorganized structure, the Division of Clearing and Intermediary Oversight has been reconfigured into two new divisions: the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk.

The Commission is amending its regulations to reflect this reorganized structure. Accordingly, as indicated in the chart below, the Commission is deleting references to the former division and replacing them with references to the new divisions in the Commission's regulations. As amended, the regulations will reflect new assignments of responsibilities, including delegated authorities, to the new divisions.

II. Related Matters

A. Administrative Procedure Act

The amendments to the Commission's regulations in this rulemaking do not establish any new substantive or legislative rules, but rather relate solely to the restructuring of responsibilities within the Commission, including amendments re-delegating authority to newly formed divisions, and therefore relate solely to agency organization, procedure, and practice. Therefore, this rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act.[3] Additionally, as the revisions to the Commission's regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised, the Commission has determined to make this rulemaking effective upon publication in the **Federal Register**.[4]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.[5] The Commission is obligated to conduct a regulatory flexibility analysis for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act.[6] This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act. Accordingly, the Commission is not obligated to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act.[7] This rulemaking contains no collection of information for which the Commission is obligated to obtain a control number from OMB.

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[2] The Commodity Exchange Act may be found at 7 U.S.C. 1 et seq.

[3] 5 U.S.C. 553(b).

[4] *See* 5 U.S.C. 553(d).

[5] *See* 5 U.S.C. 601 et seq.

[6] 5 U.S.C. 601(2).

[7] *See* 44 U.S.C. 3501 et seq.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PARTS 1, 3, 5, 9, 11, 31, 40, 41, 140, 145, 170, 171, and 190—[AMENDED]

■ 1. For each section and paragraph indicated in the left column of the following table, remove the division name or title indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the division name or title indicated in the right column:

Section	Remove	Add
1.12(g)(3)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.12(h)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.17(c)(6)(ii)(A)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.17(c)(6)(ii)(D)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.17(c)(6)(iii)(B)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.65(d)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
1.66(b)(5)(ii)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.22 introductory text	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.50(c)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.50(d)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.55(e)(2)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.56(e)(2)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.63	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.70(a)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
3.70(a)	Attn: Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight.	Attn: Deputy Director, Registration and Compliance Branch, Division of Swap Dealer and Intermediary Oversight.
Pt. 3 app. A, note 2	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
5.6(f)(3)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
5.6(h)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
5.20(d) (2 references)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
5.23(f)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
9.2(h)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.
9.26	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.
9.31(a)	Division Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.
11.2(a)	the Director of the Division of Clearing and Intermediary Oversight.	the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.
31.13(n)(1) (2 references)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
31.14(a)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
40.7(a)(1)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
40.7(a)(2)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
40.7(a)(3)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
40.7(a)(4)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
40.7(b)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
40.7(c)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
41.3(d)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
Pt. 140 Table of Contents (140.75).	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
Pt. 140 Table of Contents (140.91).	Division of Trading and Markets	Division of Swap Dealer and Intermediary Oversight.
Pt. 140 Table of Contents (140.93).	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
Pt. 140 Table of Contents (140.94).	Director of the Division of Clearing and Risk	Directors of the Division of Clearing and Risk and the Division of Swap Dealer and Intermediary Oversight.
140.72(a)	Director of the Division of Clearing and Intermediary Oversight, each Deputy Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight, the Chief Counsel of the Division of Swap Dealer and Intermediary Oversight, each Deputy Director of the Division of Swap Dealer and Intermediary Oversight, the Director of the Division of Clearing and Risk, the Chief Counsel of the Division of Clearing and Risk, each Deputy Director of the Division of Clearing and Risk.
140.73(a)	Director of the Division of Clearing and Intermediary Oversight or, in his or her absence, each Deputy Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight or, in his or her absence, the Chief Counsel of the Division of Swap Dealer and Intermediary Oversight, each Deputy Director of the Division of Swap Dealer and Intermediary Oversight, the Director of the Division of Clearing and Risk or, in his or her absence, the Chief Counsel of the Division of Clearing and Risk, each Deputy Director of the Division of Clearing and Risk.

Section	Remove	Add
140.75 (section heading and 2 references).	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.76(a)	Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight, the Director of the Division of Clearing and Risk.
140.76(b)	Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight, the Director of the Division of Clearing and Risk.
140.91 (section heading)	Division of Trading and Markets	Division of Swap Dealer and Intermediary Oversight.
140.91(a)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.91(b)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.92(a)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.92(b)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.92(c)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.93 (section heading)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.93(a)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.93(b)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.93(c)	Division of Clearing Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
140.95(a)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.95(b)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.95(c)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.
140.96(b)	the Director of the Division of Clearing and Intermediary Oversight or the Director's designee.	the Director of Swap Dealer and Intermediary Oversight or the Director's designee, and to the Director of the Division of Clearing and Risk or the Director's designee.
140.96(c)	Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight or the Director of the Division of Clearing and Risk.
140.96(d)	Director of the Division of Clearing and Intermediary Oversight.	Director of the Division of Swap Dealer and Intermediary Oversight or the Director of the Division of Clearing and Risk.
140.99(a)(5)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk.
Part 145, App. A, (g)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
Pt. 170 (Table of Contents)	170.12 Delegation of Authority to Director of the Division of Clearing and Intermediary Oversight.	170.12 Delegation of Authority to Director of the Division of Swap Dealer and Intermediary Oversight.
170.12 (section heading and 1 reference).	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight.
171.28	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk.
171.31(a)	Division of Clearing and Intermediary Oversight	Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk.
190.10(b)(4)	Director of the Division of Clearing and Intermediary Oversight, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, in his sole discretion.	Director of the Division of Clearing and Risk, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, after consultation with the Director of the Division of Swap Dealer and Intermediary Oversight, or such member of the Commission's staff under his direction as he may designate, unless exigent circumstances require immediate action precluding such prior consultation.
190.10(d) heading	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
190.10(d)(1)	Director of the Division of Clearing and Intermediary Oversight, and to such members of the Commission's staff acting under his direction as he may designate.	Director of the Division of Clearing and Risk, and to such members of the Commission's staff acting under his direction as he may designate, after consultation with the Director of the Division of Swap Dealer and Intermediary Oversight, or such member of the Commission's staff under his direction as he may designate, unless exigent circumstances require immediate action.
190.10(d)(2)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.
190.10(d)(3)	Division of Clearing and Intermediary Oversight	Division of Clearing and Risk.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 2. The authority citation for Part 140 is revised to read as follows:

Authority: 7 U.S.C. 2(a)(12), 13(c), 13(d), 13(e), and 16(b).

■ 3. Section 140.94 is revised to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time:

(1) All functions reserved to the Commission in § 5.7 of this chapter;

(2) All function reserved to the Commission in § 5.10 of this chapter;

(3) All functions reserved to the Commission in § 5.11 of this chapter;

(4) All functions reserved to the Commission in § 5.12 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 5.12(i) of this chapter; and

(5) All functions reserved to the Commission in § 5.14 of this chapter.

(b) The Director of the Division of Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him or her under paragraph (a) of this section to the Commission for its consideration.

(c) The Commission hereby delegates, until such time as the Commission orders otherwise, the following function to the Director of the Division of Clearing and Risk and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time:

(1) All functions reserved to the Commission in §§ 39.3(a)(1), (a)(2), (a)(3), 39.3(b)(1), and 39.3(f)(4) of this chapter;

(2) All functions reserved to the Commission in § 39.4(a) of this chapter;

(3) All functions reserved to the Commission in § 39.5(b)(2), (b)(3)(ix), (c)(1), and (d)(3) of this chapter;

(4) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(5) All functions reserved to the Commission in § 39.11(b)(1)(vi), (b)(2)(ii), (c)(1), (c)(2), (f)(1), and (f)(4) of this chapter;

(6) All functions reserved to the Commission in § 39.12(a)(5)(i)(B) of this chapter;

(7) All functions reserved to the Commission in § 39.13(g)(8)(ii), (h)(1)(i)(C), (h)(1)(ii), (h)(3)(i), (h)(3)(ii), and (h)(5)(i)(A) of this chapter;

(8) The authority to request additional information in support of a rule submission under § 39.15(b)(2)(iii)(A) of this chapter and in support of a petition pursuant to section 4d of the Act under § 39.15(b)(2)(iii)(B) of this chapter;

(9) All functions reserved to the Commission in § 39.19(c)(3)(iv), (c)(5)(i), (c)(5)(ii), and (c)(5)(iii) of this chapter;

(10) All functions reserved to the Commission in § 39.20(a)(5); and

(11) All functions reserved to the Commission in § 39.21(d) of this chapter.

(d) The Director of Clearing and Risk may submit any matter which has been delegated to him or her under paragraph (c) of this section to the Commission for its consideration.

(e) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Swap Dealers and Intermediary Oversight under paragraph (a) or to the Director of the Division of Clearing and Risk under paragraph (c) of this section.

■ 4. Amend § 140.99 to revise paragraph (d)(2) to read as follows:

§ 140.99 Requests for exemptive, no-action and interpretative letters.

* * * * *

(d) * * *

(2)(i) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered swap execution facilities, registered swap data repositories, registered foreign boards of trade, exempt commercial markets, exempt boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, made available for trading determinations, position limits, hedging exemptions, position aggregation treatment or the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(ii) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing or related to derivatives clearing organizations and other central counterparties, the clearing process, the clearing requirement determination, Commission regulation 1.25 jointly with the Director of the Division of Swap Dealer and Intermediary Oversight, risk assessment, financial surveillance, the end user exemption, and bankruptcy shall be filed with the Director, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(iii) A request for a Letter relating to all other provisions of the Act or Commission rules, including Commission regulation 1.25 jointly with the Director of the Division of Clearing and Risk, shall be filed with the Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(iv) The requests described in paragraphs (d)(2)(i) through (iii) of this section must be submitted electronically using the email address *dmoletters@cftc.gov* (for a request filed with the Division of Market Oversight), *dcrletters@cftc.gov* (for a request filed with the Division of Clearing and Risk), or *dsioletters@cftc.gov* (for a request filed with the Division of Swap Dealer and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight, the Division of Clearing and Risk, or the Division of Swap Dealer and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

* * * * *

Issued in Washington, DC, on April 5, 2013, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–08353 Filed 4–15–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and

Maritime Law) has determined that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective April 16, 2013 and is applicable beginning April 4, 2013.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2 (a)(i), pertaining to the location of the forward masthead light at a height not less than 12 meters above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by revising the entry for USS CORONADO (LCS 4); and

■ B. In Table Five by revising the entry for USS CORONADO (LCS 4).

The revisions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * * * *	*	*
USS CORONADO	LCS 4	4.20
* * * * *	*	*

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS CORONADO	LCS 4		X	X	16.5
* *	*	*	*	*	*

Approved: April 4, 2013.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: April 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy,Federal Register Liaison Officer.

[FR Doc. 2013–08914 Filed 4–15–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0236]

Drawbridge Operation Regulations; Taunton River, Fall River and Somerset, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulation.

SUMMARY: The Coast Guard is issuing a temporary deviation from the regulation governing the operation of the Brightman Street Bridge across the Taunton River, mile 1.8, between Fall River and Somerset, Massachusetts. The deviation is necessary to facilitate power equipment upgrades. During this temporary deviation, the bridge may remain in the closed position for five hours.

DATES: This deviation is effective from 4:30 p.m. until 9:30 p.m. on April 16, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0236] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. John McDonald, Project Officer, First Coast Guard District, *john.w.mcdonald@uscg.mil,* or (617) 223–8364. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Brightman Street Bridge has a vertical clearance of 27 feet at mean high water and 31 feet at mean low water in the closed position. Currently, in accordance with 33 CFR 117.619, the draw opens on signal between 5 a.m. and 9 p.m. From 9 p.m. until 5 a.m. the draw opens on signal with at least one hour advance notice.

The bridge owner, Massachusetts Department of Transportation, requested a five hour closure to facilitate electrical upgrades by the local power company, National Grid.

Under this temporary deviation the Brightman Street Bridge may remain in the closed position from 4:30 p.m. until 9:30 p.m. on April 16, 2013.

The Taunton River is a recreational waterway. The bridge rarely opens during the time period this temporary deviation will be in effect.

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

Dated: April 4, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–08843 Filed 4–15–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0369; FRL–9803–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Emissions Inventory for the West Virginia Portion of the Steubenville-Weirton, OH-WV Nonattainment Area for the 1997 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), on June 24, 2009 for the Steubenville-Weirton, OH–WV nonattainment area (the Steubenville-Weirton Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The emissions inventory is part of a SIP revision that was submitted to meet West Virginia's nonattainment requirements related to the Steubenville-Weirton Area. EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on May 16, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0369. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Background

On December 26, 2012 (77 FR 75933), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of the $PM_{2.5}$ 2002 base year emissions inventory for the West Virginia portion of the Steubenville-Weirton Area. The formal SIP revision was submitted by the State of West Virginia on June 24, 2009.

II. Summary of SIP Revision

The $PM_{2.5}$ 2002 base year emission inventory submitted by WVDEP on June

24, 2009 for the West Virginia portion of the Steubenville-Weirton Area includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The pollutants that comprise the inventory are $PM_{2.5}$, coarse particles (PM_{10}), nitrogen oxides (NO_X), volatile organic compounds (VOC), ammonia (NH_3), and sulfur dioxide (SO_2). The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b).

EPA reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. EPA found that the process used to develop this emissions inventory for the West Virginia portion of the Steubenville-Weirton Area is adequate and meets the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories. EPA's evaluation can be found in the Technical Support Document dated August 12, 2010, available online at *www.regulations.gov,* Docket No. EPA–R03–OAR–2012–0369. Specific requirements of the base year inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory for the West Virginia portion of the Steubenville-Weirton as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the $PM_{2.5}$ 2002 base year emissions inventory for the West Virginia portion of the Steubenville-Weirton Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *			*	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	West Virginia portion of the Steubenville-Weirton, OH–WV 1997 $PM_{2.5}$ nonattainment area.	6/24/09	4/16/13 [*Insert page number where the document begins*].	52.2531(e).

■ 3. Section 52.2531 is amended by adding paragraph (e) to read as follows:

§ 52.2531 Base year emissions inventory.

* * * * *

(e) EPA approves as a revision to the West Virginia State Implementation Plan the 2002 base year emissions inventory for the West Virginia portion of the Steubenville-Weirton, OH-WV fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the West Virginia Department of Environmental Protection on June 24, 2009. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2).

[FR Doc. 2013–08835 Filed 4–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2013–0104; FRL–9802–6]

Designation of Areas for Air Quality Planning Purposes; State of Nevada; Total Suspended Particulate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delete certain area designations for total suspended particulate within the State of Nevada because the designations are no longer necessary. These designations relate to the attainment or unclassifiable areas for total suspended particulate in Clark County as well as the following nonattainment areas for total suspended particulate elsewhere within the State of Nevada: Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area. EPA is taking this action under the Clean Air Act.

DATES: This rule is effective on June 17, 2013, unless EPA receives adverse comment by May 16, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0104, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: oconnor.karina@epa.gov.*
3. *Mail or deliver:* Karina O'Connor (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, EPA Region IX, (775) 434–8176, *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Statutory and Regulatory Background

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act (''Act'' or CAA), as amended in 1970, EPA promulgated the original National Ambient Air Quality Standards (NAAQS) for the ''criteria'' pollutants, which included carbon monoxide, hydrocarbons, nitrogen dioxide, photochemical oxidant, sulfur dioxide, and particulate matter. The original NAAQS for particulate matter was defined in terms of a reference method that called for measuring particulate matter up to a nominal size of 25 to 45 micrometers or microns. This fraction of total ambient particulate matter is referred to as ''total suspended particulate'' or TSP. Within nine months thereafter, each State was required under section 110 of the 1970 amended Act to adopt and submit to EPA a plan, referred to as a State Implementation Plan (SIP), which provides for the implementation, maintenance, and enforcement of the NAAQS within each State. The State of Nevada submitted its SIP on January 28,

1972, and EPA approved Nevada's original SIP submittal later that year. See 37 FR 10842 (May 31, 1972).

Generally, SIPs were to provide for attainment of the NAAQS within three years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS. Under section 107(d) of the 1977 amended Act, States were to make recommendations for all areas within their borders as attainment, nonattainment, or unclassifiable for each of the NAAQS, including TSP, and EPA was to designate areas based on those recommendations, as modified if appropriate. For Nevada, the State recommended, and EPA approved, the use of hydrographic areas as the geographic basis for designating air quality planning areas. See 67 FR 12474 (March 19, 2002). For the TSP NAAQS, EPA designated the following areas in Nevada as ''nonattainment'': Las Vegas Valley [hydrographic area (HA) #212], Carson Desert (HA #101), Winnemucca Segment (HA #70), Lower Reese Valley (HA #59), Gabbs Valley (HA #122), Fernley Area (HA #76), Truckee Meadows (HA #87), Mason Valley (HA #108), and Clovers Area (HA #64). See 43 FR 8962, at 9012 (March 3, 1978). EPA designated all other areas in Nevada as attainment or unclassifiable for the TSP NAAQS. The area designations for air quality planning purposes in Nevada under the Clean Air Act are codified at 40 CFR 81.329.

Since the establishment of the original designations in 1978, EPA has taken three actions directly related to the Nevada TSP designations. In 1980, we redesignated Gabbs Valley (HA #122) from nonattainment to unclassifiable for the TSP NAAQS. See 45 FR 35327 (May 27, 1980). Later that same year, we approved a request from the State of Nevada to reduce the size of the Carson Desert TSP nonattainment area (HA #101) thereby creating a new unclassifiable TSP area known as Packard Valley (HA #101A). See 45 FR 46807 (July 11, 1980). In 2002, we deleted certain attainment and unclassifiable area designations for TSP. See 67 FR 68769 (November 13, 2002).

The Clean Air Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. The various local entities and the State of Nevada responded by developing and submitting attainment plans for the TSP nonattainment areas, and in 1981, EPA approved these plans on condition that the State submit, within a prescribed period of time, revisions to correct certain deficiencies. See 46 FR 21758 (April 14, 1981). In 1982, we found that the State had submitted the required revisions correcting the identified deficiencies, and we revoked the conditions placed on our approval of the TSP plans. See 47 FR 15790 (April 13, 1982).

In 1987, EPA revised the NAAQS for particulate matter, eliminating TSP as the indicator for the NAAQS and replacing it with the ''PM_{10}'' indicator. See 52 FR 24634 (July 1, 1987). PM_{10} refers to particles with an aerodynamic diameter less than or equal to a nominal 10 microns. We indicated in the preamble to our regulations implementing the then-new PM_{10} NAAQS that we would consider deletion of TSP area designations once EPA had reviewed and approved revised SIPs that include control strategies for the PM_{10} NAAQS and once EPA had promulgated PM_{10} increments for the prevention of significant deterioration (PSD) program. See 52 FR 24672, at 24682 (July 1, 1987).

Under our regulations for implementing the revised particulate matter NAAQS (i.e., the PM_{10} NAAQS), EPA did not designate areas as nonattainment, attainment, or unclassifiable but categorized areas into three groups, referred to as Group I, Group II, or Group III. Group I areas were those that had a probability of not attaining the PM_{10} NAAQS (based on existing TSP data) of at least 90%. Group I areas were required to submit SIP revisions that contain full PM_{10} control strategies including a demonstration of attainment. See 52 FR 24672, at 24681 (July 1, 1987). We identified the Las Vegas (HA #212) and Reno (HA #87, known as ''Truckee Meadows'') planning areas as Group I areas. See 52 FR 29383 (August 7, 1987) and 55 FR 45799 (October 31, 1990).

Group II areas were those that had a probability of not attaining the PM_{10} NAAQS of between 20% and 95% based on available TSP data. Group II areas were not required to submit SIP revisions that contained full PM_{10} control strategies but were required to submit SIP revisions that included enforceable commitments to gather PM_{10} ambient data, analyze and verify the ambient PM_{10} data and report any PM_{10} exceedances to EPA, and to revise the SIP if the exceedances constitute violations of the PM_{10} NAAQS. We identified the Battle Mountain area as a Group II area. See 52 FR 29383 (August 7, 1987). The Battle Mountain area is located in north-central Nevada and includes Lower Reese River Valley and Clovers Area as well as Boulder Flat to the east. In 1990, EPA approved the ''committal SIP'' for PM_{10} for the Battle Mountain area. See 55 FR 18110 (May 1, 1990).

Group III areas were those that had a probability of not attaining the PM_{10} NAAQS of less than 20%. For Group III areas, EPA presumed that the existing SIP that had been developed to address the TSP NAAQS would be adequate to demonstrate attainment and maintenance of the PM_{10} NAAQS. All areas of Nevada, i.e., other than Las Vegas, Reno, and Battle Mountain, as discussed above, were categorized as Group III.

The Clean Air Act was significantly amended in 1990. Under the 1990 amended Act, Congress replaced the PM_{10} regulatory approach established by EPA in 1987 with the area designation concept and designated former ''Group I'' areas and certain other areas as nonattainment areas for PM_{10} by operation of law. See section 107(d)(4)(B) of the Act. All other areas were designated unclassifiable for PM_{10} by operation of law. As former ''Group I'' areas, the Las Vegas and Reno planning areas were designated as nonattainment areas for PM_{10} by operation of law. See 56 FR 11101 (March 15, 1991). The rest of the State of Nevada, including the former Group II area, Battle Mountain, was designated as unclassifiable for PM_{10}. See 57 FR 56762 (November 30, 1992).

The 1990 Act amendments also provided for the continued transition from TSP to PM_{10}. Specifically, section 107(d)(4)(B) states in relevant part: ''Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 163(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.''

Section 166(f) of the 1990 amended Act authorizes EPA to replace the TSP increments with PM_{10} increments, and in 1993, EPA promulgated the PM_{10} increments and revised the PSD regulations accordingly. See 58 FR 31622 (June 3, 1993). In our June 1993 final rule, we indicated that the replacement of the TSP increments with PM_{10} increments negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such

TSP designations in 40 CFR part 81 upon the occurrence of, among other circumstances, EPA's approval of a State's or local agency's revised PSD program containing the PM_{10} increments. See 58 FR 31622, at 31635 (June 3, 1993).

In November 2002, we deleted the TSP attainment or unclassifiable area designations throughout the State of Nevada, except for those in Clark County. See 67 FR 68769 (November 13, 2002). In our November 2002 final rule, we did not delete any nonattainment area designations for the TSP NAAQS. In today's action, we are deleting all of the remaining TSP attainment or unclassifiable area designations in the State of Nevada and are deleting all of the TSP nonattainment area designations except for the Las Vegas planning area (i.e., HA #212, Las Vegas Valley) and the Reno planning area (i.e., HA #87, Truckee Meadows).[1]

II. EPA's Evaluation of the Effect of Deleting Certain TSP Area Designations

A. General Considerations

Consistent with section 107(d)(4)(B), we have considered the continued necessity for retaining the remaining TSP area designations in Nevada, and as discussed in more detail in the following subsections, we have decided that the TSP attainment or unclassifiable area designations we specifically retained in our November 2002 final rule and the TSP nonattainment designations for Carson Desert (HA #101), Winnemucca Segment (HA #70), Lower Reese Valley (HA #59), Fernley Area (HA #76), Mason Valley (HA #108), and Clovers Area (HA #64), are no longer necessary. As a result, we are deleting them from the TSP table in 40 CFR 81.329.

To evaluate whether the TSP area designations should be retained or can be deleted, we have relied upon the final rule implementing the PM_{10} NAAQS (see 52 FR 24634, July 1, 1987), a policy memorandum on TSP redesignations (see memo dated May 20, 1992 from Joseph W. Paisie, Acting Chief, SO_2/Particulate Matter Programs Branch, EPA Office of Air Quality Planning and Standards, to Chief, Air Branch, Regions I–X, entitled ''TSP Redesignation Request''), and our proposed and final rules establishing maximum allowable increases in concentrations (also known as ''increments'') for PM_{10} (see the proposed rule at 54 FR 41218, October 5, 1989, and the final rule at 58 FR 31622, June 3, 1993).

Based on the above references, we believe that the relevant considerations for evaluating whether the necessity of retaining the TSP area designations depend upon the status of a given area with respect to TSP and PM_{10}. For areas that are attainment or unclassifiable for TSP and also unclassifiable for PM_{10}, we generally find that the TSP designations are no longer necessary and can be deleted when EPA (1) approves a State's revised PSD program containing the PM_{10} increments, (2) promulgates the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own, or (3) approves a State's request for delegation of PSD responsibility under 40 CFR section 52.21(u). See 58 FR 31622, at 31635 (June 3, 1993).

For areas that are nonattainment for TSP but unclassifiable for PM_{10}, an additional consideration is whether deletion of the TSP designations would automatically relax any emissions limitations, control measures or programs approved into the SIP. If such a relaxation would occur automatically with deletion of the TSP area designations, then we will not delete the designations until we are satisfied that the resulting SIP relaxation would not interfere with any applicable requirement concerning attainment, reasonable further progress (RFP), or maintenance of the NAAQS or any other requirement of the Clean Air Act in the affected areas. See section 110(l) of the Act.

B. Deletion of TSP Attainment or Unclassifiable Area Designations in Clark County

This subsection addresses the 28 TSP attainment or unclassifiable areas that are located either partially or entirely within the Clark County, Nevada. These 28 areas are designated as unclassifiable for PM_{10}.

In our November 2002 final rule deleting certain TSP attainment or unclassifiable area designations in Nevada, we indicated that we would delete the TSP attainment or unclassifiable area designations partially or entirely located in Clark County once we approve revisions to the Clark County pre-construction stationary source permit program (referred to as ''new source review'') that implement the PM_{10} increments. See 67 FR 68769, at 68776 (November 13, 2002). (In Clark County, the agency responsible for the stationary source control program is the Clark County Department of Air Quality and Environmental Management.) In September 2004, we approved such revisions as part of our approval of comprehensive revisions to the Clark County new source review program. See 69 FR 54006 (September 7, 2004). Thus, we now find that the 28 TSP attainment or unclassifiable area designations either partially or entirely located within Clark County are no longer necessary and can be deleted. These areas include the Colorado River Valley (HA #213) and 27 other hydrographic areas included within the shorthand term, ''rest of county,'' in the ''Nevada-TSP'' table in 40 CFR 81.329.

C. Deletion of TSP Nonattainment Area Designations for Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area

This subsection addresses the deletion of the TSP nonattainment designations for Carson Desert (HA #101), Winnemucca Segment (HA #70), Lower Reese Valley (HA #59), Fernley Area (HA #76), Mason Valley (HA #108), and Clovers Area (HA #64). These six TSP nonattainment areas are designated as unclassifiable for PM_{10}.

With respect to protection of the PM_{10} increments, the TSP nonattainment designations are no longer necessary in these six areas because they are designated as unclassifiable for PM_{10}, and as such, have been subject to the PM_{10} increments established in our 1993 final rule as of the effective date of that rule, i.e., June 3, 1994, through EPA's PSD pre-construction permit program promulgated at 40 CFR 52.21. See 40 CFR 52.1485(b) and note that these six areas lie outside of Clark County.

To ensure that deletion of the TSP nonattainment designations for these six areas would not result in any automatic relaxations in SIP emissions limitations, control measures or programs that would be interfere with attainment, RFP or maintenance of the NAAQS (including PM_{10}) or any other requirement of the Act, we reviewed the applicable portions of the SIP, with particular focus on the TSP control strategy attainment plans that were approved for these TSP nonattainment areas. These plans include the Carson Desert Air Quality Implementation Plan (AQIP), the Winnemucca Segment AQIP, the Lander County Air Quality

[1] In June 1992, the State of Nevada requested that we reclassify the eight existing TSP nonattainment areas in Nevada to ''unclassifiable'' status. See letter from L.H. Dodgion, Administrator, NDEP, to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated June 15, 1992. We believe that deletion of the TSP nonattainment designations for the six areas addressed in this action is administratively more efficient than redesignation of the six areas to unclassifiable. We will consider deletion of the two TSP area designations that will remain after our action today, i.e., the TSP designations for Las Vegas (HA #212, Las Vegas Valley) and Reno (HA #87, Truckee Meadows), in future rulemakings.

Improvement Plan (which covers both the Lower Reese Valley and Clovers areas), and the Mason Valley and Fernley Area AQIP.

These four plans (which cover the six areas) were submitted by the State of Nevada to EPA on December 29, 1978. We also reviewed the materials that the State of Nevada submitted to EPA to supplement these plans, including the paving schedules as submitted on July 24, 1979 for the city of Fallon (Carson Desert), the city of Winnemucca (Winnemucca Segment), and the cities of Fernley and Yerington (Mason Valley and Fernley areas); a resolution adopted by Lander County (Lower Reese Valley and Clovers areas) as submitted on July 24, 1979; and the State's nonattainment new source review rule (Article 13.1.3) as submitted on March 17, 1980. We approved all four plans, as supplemented, on April 14, 1981 (at 46 FR 21758), on condition that the State identify and commit the monetary and manpower resources necessary for implementation of these plans. The State identified the necessary resources in a letter submitted to EPA on October 21, 1981. This letter provided the basis on April 13, 1982 (at 47 FR 15790) for EPA to revoke the condition placed on full approval of the four TSP plans.

A review of these four plans, as supplemented and approved, reveals that the TSP problems in these areas were caused by similar types of sources and that attainment of the TSP NAAQS (projected for 1982) relied upon a similar mix of control measures. While the relative proportions of the various source categories vary somewhat among the four areas, the emissions inventories prepared for these plans indicate that the principal sources of TSP in these areas are fugitive sources, such as travel over unpaved roads and construction activities, and industrial processing activities. As such, the control strategies set forth in all of the plans rely on local dust ordinances, completion of local road paving projects, and regulation of emissions from industrial processing activities.

Among the local dust ordinances referred to in these four plans, only one, the Lander County Dust Ordinance (LC8–78), was submitted and approved by EPA as a revision to the Nevada SIP. None of the provisions in the Lander County Dust Ordinance are contingent upon the continuation of a TSP nonattainment designation, and thus deletion of the designation would not automatically relax any of the dust control requirements set forth therein. Likewise, none of the road paving project commitments in the TSP nonattainment areas is contingent upon the continuation of the TSP nonattainment designations, and by their own terms, all of these projects were to have been completed 20+ years ago.

With respect to industrial sources, the TSP plans rely upon the Nevada Division of Environmental Protection (NDEP) to implement and enforce rules adopted by the State Environmental Commission (SEC) that establish emissions limitations on existing sources (referred to as ''prohibitory'' rules) and that establish pre-construction permitting requirements for new or modified stationary sources (referred to as ''new source review''). NDEP is the agency directly responsible for regulation of stationary sources of air pollution throughout the State of Nevada with the exception of Clark and Washoe counties and is the applicable air quality agency in the six TSP nonattainment areas addressed in this action. The air pollution control rules administered by NDEP were originally codified as ''Articles'' of the State of Nevada Air Quality Regulations (NAQR), but the original SIP rules have largely been superseded by subsequently submitted (and approved) rules that have been codified in chapter 445, then later, in chapter 445B, of the Nevada Administrative Code (NAC).

Thus, we reviewed the relevant State prohibitory rules approved by EPA as revisions to the Nevada SIP. These rules include NAC 445B.22017 (''Visible emissions: Maximum opacity; determination and monitoring of opacity''), NAC 445B.22067 (''Open burning''), NAC 445B.2207 (''Incinerator burning''), NAQR Article 7.2.5.1 (source-specific particulate matter limits for Milchem Incorporated near Battle Mountain), NAC 445.730 (''Colemanite flotation processing plants''), NAC 445B.2203 (''Emissions of particulate matter: Fuel-burning equipment''), NAC 445B.22033 (''Emissions of particulate matter: Sources not otherwise limited''), NAC 445B.22037 (''Emissions of particulate matter: Fugitive dust''), NAQR article 16.3.3.2 and 16.3.3.3 (opacity standards for portland cement plants), NAC 445.808 (source-specific particulate and opacity limits for certain barite processing facilities), and NAC 445.816 (source-specific particulate and opacity limits for certain precious metal ore processing facilities). None of the provisions in these various rules are contingent upon continuation of the TSP nonattainment designations and thus deletion of the TSP designations would not automatically relax any standard.

Lastly, we reviewed the relevant EPA-approved new source review rules (i.e., pre-construction permitting rules for new or modified stationary sources), in particular NAQR Article 13, section 13.1.3, which we approved in 1981 (see 46 FR 21758, April 14, 1981). We note that the specific requirements of paragraph (2) of section 13.1.3, including a control technology requirement for the lowest achievable emission rate (LAER) and the provision for offsets, apply to certain new point sources (those for which an Environmental Evaluation (EE) must be prepared) in ''any designated nonattainment area'' for ''each nonattainment pollutant.''

The term ''nonattainment area'' is defined in the Nevada SIP (see NAC 445B.112) and may well continue to apply to TSP designations that remain in 40 CFR 81.329. However, the term ''nonattainment pollutant'' is not defined in the Nevada SIP but can be assumed to relate to the pollutants for which ambient air quality standards are established because area designations, such as the designation of ''nonattainment,'' follow from the establishment of such standards for a given air pollutant. Such pollutants are often referred to as ''criteria air pollutants.'' The Nevada SIP lists criteria air pollutants and associated ambient air quality standards in NAC 445B.22097 (''Standards of quality for ambient air''), which we approved on March 27, 2006 (71 FR 15040). The prior SIP rule, NAC 445.843, that was replaced by NAC 445B.22097, had listed the TSP NAAQS, but NAC 445B.22097 does not. With respect to particulate matter, NAC 445B.22097 lists only one pollutant, PM_{10}. Thus, at least since the effective date of our March 2006 final rule (i.e., April 26, 2006), ''nonattainment pollutant'' no longer refers to TSP for the purposes of NAQR article 13.1.3. Thus, deletion of the six TSP nonattainment designations would have no effect on new source review in those six areas.

In summary, because the deletion of the TSP nonattainment designations for the six TSP areas would not automatically relax any emissions limitation or control measure in the Nevada SIP, we find that the TSP nonattainment designations are no longer necessary and can be deleted. Based on the above discussion and evaluation, therefore, we are deleting Carson Desert (HA #101), Winnemucca Segment (HA #70), Lower Reese Valley (HA #59), Fernley Area (HA #76), Mason Valley (HA #108), and Clovers Area (HA #64) from the ''Nevada-TSP'' table in 40 CFR 81.329.

III. Final Action and Request for Comment

For the reasons given above, EPA is taking action, under section 107(d)(4)(B) of the Clean Air Act, as amended in 1990, to delete all of the remaining area designations for total suspended particulate within the State of Nevada [except for Las Vegas Valley (HA #121) and Truckee Meadows (HA #87)] because the designations are no longer necessary. To codify this action, the chart in 40 CFR 81.329 entitled ''Nevada-TSP'' is being modified to delete the entries for Colorado River Valley and ''Rest of County'' under Clark County as well as the entries for Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area, effective June 17, 2013.

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as a proposal to delete the Nevada TSP area designations discussed above if relevant adverse comments are received. This rule will be effective on June 17, 2013 without further notice unless we receive adverse comment by May 16, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely deletes certain area designations that had been established for air quality planning purposes but that are no longer necessary and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule deletes certain area designations that had been established for air quality planning purposes but that are no longer necessary and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely deletes certain area designations that had been established for air quality planning purposes but that are no longer necessary, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 17, 2013.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 1, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 81, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

§ 81.329 Nevada.

■ 2. In § 81.329, the table ''Nevada—TSP'' is revised to read as follows:

NEVADA—TSP

Designated Area [1]	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Las Vegas Valley (212) (15–24S, 56–64E)	X			
Truckee Meadows (87) (17–20N, 18–21E)	X			

[1] ''Designated area'' refers to hydrographic areas identified by number as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971). Township and Range is shown for general information purposes only.

* * * * *

[FR Doc. 2013–08817 Filed 4–15–13; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 78, No. 73
Tuesday, April 16, 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 ENERGY

10 CFR Part 429

[Docket No. EERE–2013–BT–NOC–0023]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meeting for the Commercial HVAC, WH, and Refrigeration Certification Working Group and Announcement of Working Group Members To Negotiate Commercial Certification Requirements for Commercial HVAC, WH, and Refrigeration Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Commercial Heating, Ventilation, and Air-conditioning (HVAC), Water Heating (WH), and Refrigeration Certification Working Group (Commercial Certification Group). The purpose of the Commercial Certification Group is to undertake a negotiated rulemaking to discuss and, if possible, reach consensus on proposed certification requirements for commercial HVAC, WH, and refrigeration equipment, as authorized by the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

DATES: An open meeting will be held on Tuesday, April 30, 2013, 9:00 a.m.–5:00 p.m. (EDT).

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *https://www1.gotomeeting.com/register/574434864.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, Supervisory Operations Research Analyst, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza, SW., Washington, DC, 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Membership: The members of the Certification Working Group were chosen from nominations submitted in response to the Department of Energy's call for nominations published in the **Federal Register** on Tuesday, March 12, 2013. 78 FR 15653. The selections are designed to ensure a broad and balanced array of stakeholder interests and expertise on the negotiating working group for the purpose of developing a rule that is legally and economically justified, technically sound, fair to all parties, and in the public interest. All meetings are open to all stakeholders and the public, and participation by all is welcome within boundaries as required by the orderly conduct of business. The members of the Certification Group are as follows:

DOE and ASRAC Representatives

- Laura Barhydt (U.S. Department of Energy)
- John Mandyck (UTC Climate, Controls & Security)
- Kent Peterson (P2S Engineering, Inc.)

Other Selected Members

- Karim Amrane (Air-Conditioning, Heating and Refrigeration Institute)
- Timothy Ballo (EarthJustice)
- Jeff Bauman (National Refrigeration & Air-Conditioning)
- Brice Bowley (GE Appliances)
- Mary Dane (Traulsen)
- Paul Doppel (Mitsubishi Electric US, Inc.)
- Geoffrey Halley (SJI Consultants, Inc.)
- Pantelis Hatzikazakis (Lennox International, Inc.)
- Charles Hon (True Manufacturing)
- Jill Hootman (Trane)
- Marshall Hunt (Pacific Gas and Electric Company)
- Michael Kojak (Underwriters Laboratories LLC)
- Karen Meyers (Rheem Manufacturing Co.)
- Peter Molvie (Cleaver-Brooks Product Development)
- Neil Rolph (Lochinvar, LLC)
- Harvey Sachs (American Council for an Energy-Efficient Economy)
- Ronald Shebik (Hussmann Corporation)
- Judd Smith (CSA)
- Louis Starr (Northwest Energy Efficiency Alliance)
- Phillip Stephens (Heat Transfer Products)
- Russell Tharp (Goodman Manufacturing)
- Eric Truskoski (Bradford White Corp.)

Purpose of Meeting: To provide advice and recommendations to the U.S. Department of Energy on certification requirements of commercial HVAC, WH, and refrigeration equipment under the authority of the Negotiated Rulemaking Act (5 U.S.C. 561–570, Pub. L. 104–320).

Tentative Agenda: (Subject to change):

- Overview of Working Group's Tasks;
- Discussion and Formation of a Work Plan for the Commercial HVAC, WH, and Refrigeration Certification Working Group to Accomplish Objectives; and
- Discussion of Issues for Negotiation.

Public Participation: Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov*. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise ASRAC staff as soon as possible by emailing *asrac@ee.doe.gov* to initiate the necessary procedures, no later than Tuesday, April 16, 2013. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. A third-party neutral

facilitator will make every effort to allow the presentations of views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. Written comments are welcome from all interested parties. Any comments submitted must identify the Commercial HVAC, WH, and Refrigeration Certification Working Group, and provide docket number EERE–2013–BT–NOC–0023. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: ASRACworkgroup 2013NOC0023@ee.doe.gov*. Include docket number EERE–2013–BT–NOC–0023 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The Secretary of Energy has approved publication of today's notice of open meeting.

Issued in Washington, DC, on April 9, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2013–08872 Filed 4–15–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0329; Directorate Identifier 2012–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede two existing airworthiness directives (ADs) that apply to certain Airbus Model A330–200, A330–200 Freighter, A300–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. One existing AD currently requires revising the airplane flight manual (AFM) to include appropriate operational procedures to prevent the air data inertial reference unit (ADIRU) from providing erroneous data to other airplane systems. The other existing AD currently requires revising the AFM to provide appropriate operational procedures to prevent the airplane flight directors (FDs), autopilot (AP), and auto-thrust re-engagement in the event of airspeed sources providing similar but erroneous data. Since we issued that AD, we have determined that new software standards for the flight control primary computers (FCPCs) are necessary to inhibit autopilot re-engagement under unreliable airspeed conditions. This proposed AD would require that operators modify or replace all three FCPCs with new software standards. This proposed AD would also remove certain airplanes from the applicability. We are proposing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 31, 2013.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0329; Directorate Identifier 2012–NM–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On January 23, 2009, we issued AD 2009–04–07, Amendment 39–15813 (74

FR 7549, February 18, 2009). On January 12, 2011, we issued AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011). Those ADs required actions intended to address an unsafe condition on the products listed above.

Since we issued those ADs, we have determined that new software standards for the FCPCs are necessary to inhibit autopilot re-engagement under unreliable airspeed conditions. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2011–0199R1, dated February 17, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been determined that, when there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed.

Futher analyses have shown that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of AP and A/THR. However, in some cases, the AP orders may be inappropriate, such as possible abrupt pitch command.

In order to prevent such events which may, under specified circumstances, constitute an unsafe condition, EASA issued AD 2010–0271 [which corresponds to FAA AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011)] to require an amendment of the Flight Manual to ensure that flight crews apply the appropriate operational procedure.

Since that [EASA] AD was issued, new FCPC software standards have been developed that will inhibit autopilot engagement under unreliable airspeed conditions.

Consequently, EASA issued AD 2011–0199 to require software standard upgrade of the three FCPCs by either modification or replacement, as follows:

—software standard P11A/M20A on FCPC 2K2 hardware for A330–200/–300 aeroplanes [with electrical rudder], through Airbus Service Bulletin (SB) A330–27–3176,

—software standard P12A/M21A on FCPC 2K1 hardware and M21A on FCPC 2K0 hardware for A330–200/–300 aeroplanes [with mechanical rudder], through Airbus SB A330–27–3177,

—software standard L22A on FCPC 2K1 hardware and L22A on FCPC 2K0 hardware for A340–200/–300 aeroplanes [with mechanical rudder], through Airbus SB A340–27–4174, and

—software standard L21A on FCPC 2K2 hardware for A340–300 aeroplanes [with electrical rudder], through Airbus SB A340–27–4162.

* * * * *

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

Relevant Service Information

Airbus has issued the following service bulletins:

- Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012
- Mandatory Service Bulletin A330–27–3177, dated December 21, 2011
- Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012
- Mandatory Service Bulletin A340–27–4174, dated November 21, 2011

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 59 products of U.S. registry.

The actions that are required by AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions currently required by AD 2009–04–07 is $85 per product.

The actions that are required by AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions currently required by AD 2011–02–09 is $85 per product.

We estimate that it would take about 5 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $25,075, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009), and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011), and adding the following new AD:

Airbus: Docket No. FAA–2013–0329; Directorate Identifier 2012–NM–032–AD.

(a) Comments Due Date

We must receive comments by May 31, 2013.

(b) Affected ADs

This AD supersedes AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009; and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011).

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–223F, –243F, –201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; except those on which Airbus modification 201654 has been embodied in production, or Airbus Service Bulletin A330–27–3156 has been incorporated in service.

(2) All Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by the possibility that, due to significant differences among all airspeed sources, the flight controls will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the flight director (FD) bars are automatically removed. Then, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of AP and A/THR. In some cases, however, the AP orders may be inappropriate, such as possible abrupt pitch command. We are issuing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Airplane Flight Manual (AFM) Revision: Certain NAV Faults or ATT Flag on PFD

This paragraph restates the actions required by paragraph (f) of AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009). For all airplanes except Model A330–223F and –243F airplanes: Within 14 days after March 5, 2009 (the effective date of AD 2009–04–07), revise the applicable section of the A330 or A340 (Airbus) Flight Manual (FM) by inserting a copy of A330 (Airbus) Temporary Revision (TR) 4.02.00/46, or A340 (Airbus) TR 4.02.00/54, both Issue 3, both dated January 13, 2009, as applicable. Thereafter, operate the airplane according to the limitations and procedures in the TRs. When information identical to that in the TR has been included in the general revisions of the FM, the general revisions may be inserted in the FM, and the TR may be removed.

(h) Retained AFM Revision: Alternate Law Associated With AP and A/THR Disconnection

This paragraph restates the actions required by paragraph (g) of AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011). Within 15 days after February 9, 2011 (the effective date of AD 2011–02–09), do the actions in paragraph (h)(1) or (h)(2) of this AD.

(1) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 AFM to include the following statement and operate the airplane according to these limitations and procedures. This may be done by inserting a copy of this AD in the AFM. When a statement identical to that in paragraph (h)(1) of this AD has been included in the general revisions of the Limitations and Abnormal Sections of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

PROCEDURE:

When autopilot and auto-thrust are automatically disconnected and flight controls have reverted to alternate law:

—Do not engage the AP and the A/THR, even if FD bars have reappeared

—Do not follow the FD orders

—ALL SPEED INDICATIONSX–CHECK

• If unreliable speed indication is suspected:

—UNRELIABLE SPEED INDIC/ADR CHECK PROC APPLY

• If at least two ADRs provide reliable speed indication for at least 30 seconds, and the aircraft is stablised on the intended path:

AP/FD and A/THR As required

(2) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 AFM to include the information in Airbus A330/A340 Temporary Revision (TR) TR149 (for Model A330 airplanes) or TR150 (for Model A340–200 and –300 series airplanes), both Issue 1.0, both dated December 20, 2010. These TRs introduce procedures for operation of the auto pilot and auto-thrust disconnect. Operate the airplane according to the limitations and procedures in the TRs. This may be done by inserting copies of Airbus A330/A340 TR TR149 or TR150, both Issue 1.0, both dated December 20, 2010; as applicable; into the Airbus A330/A340 AFM. When these TRs have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, and the TRs may be removed.

(i) New Software Standard Upgrade

Within 10 months after the effective date of this AD, upgrade (by modification or replacement, as applicable) the three flight control primary computers (FCPCs), as specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, as applicable. Accomplishment of the applicable requirements of this paragraph terminates the requirements of paragraphs (g) and (h) of this AD.

(1) For Model A330 series airplanes: Upgrade to software standard P11A/M20A on FCPC 2K2 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012.

(2) For Model A330 series airplanes: Upgrade to software standard P12A/M21A on FCPC 2K1 hardware, and software standard M21A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011.

(3) For Model A340 series airplanes: Upgrade to software standard L22A on FCPC 2K1 hardware, and software standard L22A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011.

(4) For Model A340 series airplanes: Upgrade to software standard L21A on FCPC 2K2 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (i)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–27–3176, dated July 26, 2011; or Airbus Mandatory Service Bulletin A330–27–3176, Revision 01, dated March 27, 2012; which are not incorporated by reference.

(2) This paragraph provides credit for the actions specified in paragraph (i)(4) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–27–4162, dated January 10, 2012, which is not incorporated by reference.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2011–0199R1, dated February 17, 2012, and the service information identified in paragraphs (i)(1)(i) through (i)(1)(viii) of this AD.

(i) Airbus Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012.

(ii) Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011.

(iii) Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012.

(iv) Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011.

(v) Airbus A330 Temporary Revision 4.02.00/46, Issue 3, dated January 13, 2009, to the Airbus A330 Airplane Flight Manual.

(vi) Airbus A340 Temporary Revision 4.02.00/54, Issue 3, dated January 13, 2009, to the Airbus A340 Airplane Flight Manual.

(vii) Airbus A330/A340 Temporary Revision TR149, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual.

(viii) Airbus A330/A340 Temporary Revision TR150, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 4, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08909 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0328; Directorate Identifier 2012–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 747–400 and –400D series airplanes. The existing AD currently requires repetitive inspections to detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and corrective actions if necessary; and repetitive post-repair and post-modification inspections, and corrective actions if necessary. Since we issued that AD, an evaluation by the design approval holder (DAH) indicated that certain upper chords of the upper deck floor beam are subject to widespread fatigue damage (WFD). A replacement was developed to support the airplane's limit of validity (LOV) of the engineering data that support the established structural maintenance program. This proposed AD would add repetitive inspections of Section 44 upper deck floor beam upper chords, and corrective actions if necessary; repetitive post-repair and post-modification inspections, and corrective actions if necessary; and replacing the upper deck floor beam upper chords. We are proposing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 31, 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, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, Technical Operations Center, ANM–100D, FAA, Denver Aircraft Certification Office (ACO), 26805 East 68th Avenue, Room 214, Denver, CO 80249; phone: 303–342–1086; fax: 303–342–1088; email: *roger.caldwell@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–2013–0328; Directorate Identifier 2012–NM–184–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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs and applicants establish a LOV of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On May 1, 2009, we issued AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), for certain Boeing Model 747–400 and 747–400D series airplanes. That AD requires repetitive inspections to detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and related investigative and corrective actions if necessary. That AD resulted from reports of cracks found in the Section 41 upper deck floor beam upper chords. We issued that AD to detect and correct cracks in these chords, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

Actions Since Existing AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009) Was Issued

Since we issued AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), an evaluation by the DAH indicating that certain upper chords of the upper deck floor beam are subject to WFD. The replacement was developed to support the airplane's LOV of the engineering data that support the established structural maintenance program.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0328.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009). This proposed AD would add repetitive inspections of Section 44 upper deck floor beam upper chords, and corrective actions if necessary; repetitive post-repair and post-modification inspections, and corrective actions if necessary; and replacing the upper deck floor beam upper chords.

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.

Changes to Existing Language in Paragraph (g) of This AD

We have revised paragraph (g) of this AD to clarify the terminology and repetitive inspections. We have removed the term ''related investigative actions'' from the paragraph and added a sentence describing the repetitive inspections for airplanes on which a repair or modification has been done.

Differences Between the Proposed AD and the Service Information

Where Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies to contact Boeing for repair instructions, this AD requires repairing using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

Explanation of Compliance Time

The compliance time for the replacement specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD unless extensive new data are provided.

Costs of Compliance

We estimate that this proposed AD affects 84 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 [retained actions from existing AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009)].	Up to 50 work-hours × $85 per hour = Up to $4,250 per inspection cycle.	$0	Up to $4,250 per inspection cycle.	Up to $357,000 per inspection cycle
Inspection [new proposed action].	259 work-hours × $85 per hour = $22,015 per inspection cycle.	0	$22,015 per inspection cycle	$1,849,260 per inspection cycle

We have received no definitive data that would enable us to provide a cost estimate for the repair or modification 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) 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0328; Directorate Identifier 2012–NM–184–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by May 31, 2013.

(b) Affected ADs

This AD supersedes AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400D series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain upper chords of the upper deck floor beam are subject to widespread fatigue damage (WFD). A replacement was developed to support the airplane's limit of validity (LOV) of the engineering data that support the established structural maintenance program. We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Inspections and Corrective Actions With Revised Service Information and Compliance Times

This paragraph restates the actions required by paragraph (g) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009) with revised service information and compliance times. Except as required by paragraphs (h)(1) and (h)(2) of this AD: At the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, do an inspection (open-hole or surface high frequency eddy current (HFEC)) to detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and do applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008; or Revision 1, dated September 19, 2012. Repeat the inspections, including the post-modification and post-repair repetitive inspections, thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, except as required by paragraph (i) of this AD. As of the effective date of this AD, use only Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, to accomplish the actions in this paragraph.

(h) Retained Exceptions

(1) This paragraph restates the exception stated in paragraph (h) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009). If any crack is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008; or Revision 1, dated September 19, 2012; specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) This paragraph restates the exception stated in paragraph (i) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13,

2009). Where Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after June 17, 2009 (the effective date of AD 2009–10–06).

(i) New Compliance Time for Airplanes on Which a Repair or Modification Is Done

For airplanes on which a repair or modification identified in Table 2 of 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, has been done: At the times specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(3) of this AD, do open-hole and surface HFEC inspections, as applicable, for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Repeat at the applicable intervals specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. If any cracking is found in the repaired or modified locations, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(j) New Inspections and Repair

For Group 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as specified in paragraph (n)(2) of this AD: Do an open-hole or surface HFEC inspection to detect cracking in the floor panel attachment fastener holes of the Section 44 upper deck floor beam upper chords, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(1) of this AD. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Do all applicable corrective actions before further flight.

(k) New Optional Terminating Modification

Doing a hole modification or repair as a hole modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, terminates the repetitive inspections specified in paragraph (j) of this AD.

(l) New Inspection and Repair of Repaired or Modified Locations

(1) For airplanes on which a repair or modification specified in the ''Condition'' column of Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, has been done: At the times specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(3) of this AD, do open hole and surface HFEC inspections, as applicable, for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Repeat at the applicable intervals specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. If any cracking is found in the repaired or modified locations, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(m) New Replacement

At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012: Replace Section 41 and 44 upper deck floor beam upper chords, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012.

(n) New Exceptions

(1) If any crack is found during any inspection required by paragraph (i) of this AD, and Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies a compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Table 2 or Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies to contact Boeing for inspections and compliance times: Before further flight, contact the FAA for inspections and compliance times, and accomplish the inspections at the given times.

(o) New Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, which has not been incorporated by reference in this AD.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (q)(2) of 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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009) are approved as AMOCs for the corresponding actions of this AD.

(q) Related Information

(1) For more information about this AD, contact Roger Caldwell, Aerospace Engineer, Technical Operations Center, ANM–100D, FAA, Denver Aircraft Certification Office (ACO), 26805 East 68th Avenue, Room 214, Denver, CO 80249; phone: 303–342–1086; fax: 303–342–1088; email: *roger.caldwell@faa.gov*.

(2) For information about AMOCs, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov*.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 5, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08904 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0327; Directorate Identifier 2011–NM–161–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 all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections for cracking in and around the upper and lower hinge cutouts of the forward entry and forward galley service doorways, and corrective actions if necessary. Since we issued that AD, we have received multiple reports of cracks in the skin and/or bear strap at the forward galley service doorway hinge cutouts, and multiple reports of cracking under the repairs installed at the hinge cutouts. This proposed AD would reduce the inspection threshold for cracking in and around the galley service doorway hinge cutouts, add inspections of certain repaired structure at the forward entry and galley service doorway upper and lower hinge cutouts, expand the inspection area at the forward entry and galley service doorway upper and lower hinge cutouts, and remove certain airplanes from the applicability. We are proposing this AD to detect and correct such cracking, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by May 31, 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 proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *Alan.Pohl@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–2013–0327; Directorate Identifier 2011–NM–161–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 May 9, 2008, we issued AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires repetitive inspections for cracking in and around the upper and lower hinge cutouts of the forward entry and forward galley service doorways, and corrective actions if necessary. That AD resulted from multiple reports of cracks found in the skin, bearstrap, and/or frame outer chord in the hinge cutout areas of the forward entry and forward galley service doorways. We issued that AD to detect and correct cracking, which could result in rapid decompression of the airplane.

Actions Since Existing AD (73 FR 29421, May 21, 2008) Was Issued

Since we issued AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), we have received 15 reports of cracks in the skin and/or bear strap at the forward galley service doorway hinge cutouts found on airplanes that had accumulated fewer than 40,000 total flight cycles (the inspection compliance time required by the existing AD). The lowest reported total flight cycles on an airplane with a crack were 24,423; this airplane had a 0.55-inch crack in the skin and no cracks in the bear strap. We have also received four reports of cracking under the repairs installed at the hinge cutouts as specified in the structural repair manual (SRM).

Relevant Service Information

We reviewed Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0327.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all the requirements of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), and would reduce the inspection threshold for cracking in and around the galley service doorway hinge cutouts, add inspections of certain repaired structure at the forward entry and galley service doorway upper and lower hinge cutouts, expand the inspection area at the forward entry and galley service doorway upper and lower hinge cutouts, and remove certain airplanes from the applicability.

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 action, 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.

Change to Existing AD (73 FR 29421, May 21, 2008)

This proposed AD would retain all the requirements of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008). Since AD 2008–11–04 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)
paragraph (g)	paragraph (h)(1)
paragraph (h)	paragraph (h)(2)

We have revised paragraph (i) of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008) (paragraph (i) of this proposed AD), by removing reference to Boeing 737–100/–200 SRM 53–30–1, Figures 20, 21, 31, or 32; and Boeing 737–300/–400/–500 SRM 53–10–01, Repair 5, 6, or 8. Instead, we have added Note 1 to paragraph (i) of this proposed AD to specify that guidance on repairs may be found in Boeing 737–100/–200 SRM 53–30–1, Figure 20, 21, 31, or 32; or Boeing 737–300/–400/–500 SRM 53–10–01, Repair 5, 6, or 8; as applicable.

Differences Between the Proposed AD and the Service Information

Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 547 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
Inspections [retained actions from AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008)].	Up to 73 work-hours × $85 per hour = $6,205 per inspection cycle.	$0	Up to $6,205 per inspection cycle.	Up to $3,394,135 per inspection cycle.
Inspection [new proposed action].	Up to 34 work-hours × $85 per hour = $2,890 per inspection cycle.	$0	Up to $2,890 per inspection cycle.	Up to $1,580,830 per inspection cycle.

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) 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), and adding the following new AD:

THE BOEING COMPANY: Docket No. FAA–2013–0327; Directorate Identifier 2011–NM–161–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by May 31, 2013.

(b) Affected ADs

This AD supersedes AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008).

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracks in the skin and/or bear strap at the forward galley service doorway hinge cutouts, and multiple reports of cracking under the repairs installed at the hinge cutouts. We are issuing this AD to detect and correct such cracking, which could result in rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (f) of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008). Except as provided by paragraph (h)(1) of this AD, at the applicable times specified in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1200, dated April 13, 2006, do external detailed, low frequency eddy current (LFEC), high frequency eddy current (HFEC), and HFEC rotary probe inspections, as applicable, for cracks in and around the upper and lower hinge cutouts of the forward entry and forward galley service doorways, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1200, dated April 13, 2006, except as provided by paragraphs (h)(2) and (i) of this AD. Do not exceed the applicable repetitive interval for the previous inspection, as specified in Boeing Alert Service Bulletin 737–53A1200, dated April 13, 2006, as Option A or Option B. Repair any crack before further flight using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Accomplishment of the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to Service Bulletin Specifications

This paragraph restates the requirements of paragraphs (g) and (h) of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008).

(1) Where Boeing Alert Service Bulletin 737–53A1200, dated April 13, 2006, specifies a compliance time after the release date of that service bulletin, this AD requires compliance within the specified compliance time after June 25, 2008 (the effective date of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008)).

(2) Although Boeing Alert Service Bulletin 737–53A1200, dated April 13, 2006, specifies contacting Boeing for information about installing an optional preventive modification that would terminate the repetitive inspections specified in paragraph (g) of this AD, this AD requires that any terminating action be done by using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(i) Retained Optional Terminating Action

This paragraph restates the optional terminating action specified paragraph (i) of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), with revised method of compliance language. The inspections specified in paragraph (g) of this AD may be terminated at areas repaired using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

Note 1 to paragraph (i) of this AD: Guidance on repairs can be found in Boeing 737–100/–200 SRM 53–30–1, Figure 20, 21, 31, or 32; or Boeing 737–300/–400/–500 SRM 53–10–01, Repair 5, 6, or 8; as applicable.

(j) New Repetitive Inspections and Repair

Except as required by paragraph (l)(1) of this AD, at the applicable times specified in Paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012: Do an external and internal detailed inspection, HFEC inspection, and HFEC hole probe inspection, at the forward entry and galley service doorway upper and lower hinge cutouts for cracking in the skin, bonded doubler, bearstrap, and frame outer chord, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, except as required by paragraph (m) of this AD. Options provided in Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, for accomplishing the inspections are acceptable for compliance with the corresponding requirements of this paragraph. Repeat the applicable inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Accomplishment of the initial inspections terminates the requirements of paragraph (g) of this AD.

(k) New Actions for Airplanes With Certain Repairs Installed

(1) For airplanes with any SRM repair specified in paragraphs (k)(1)(i) though (k)(1)(vii) of this AD installed, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012: Do an external and internal detailed inspection, HFEC inspection, and LFEC inspection, at the forward entry and galley service doorway upper and lower hinge cutouts for cracking in the skin, bearstrap, and frame outer chord, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, except as required by paragraph (l)(2) of this AD. Repeat the inspection thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(i) Repair specified in Boeing 737–100/-200 SRM 53–30–03, Figure 21.

(ii) Repair specified in Boeing 737–100/200 SRM 53–30–03, Figure 31.

(iii) Repair 5 specified in Boeing 737–300 SRM 53–10–01; Repair 5 specified in Boeing 737–400 SRM 53–10–01; or Repair 5 specified in Boeing 737–500 SRM 53–10–01; installed at the upper or lower hinge cutout.

(iv) Repair specified in Boeing 737–100/ 200 SRM 53–30–03, Figure 20.

(v) Repair 6 specified in Boeing 737–300 SRM 53–10–01; Repair 6 specified in Boeing 737–400 SRM 53–10–01; or Repair 6 specified in Boeing 737–500 SRM 53–10–01.

(vi) Repair 8 specified in Boeing 737–300 SRM 53–10–01; Repair 8 specified in Boeing 737–400 SRM 53–10–01; or Repair 8 specified in Boeing 737–500 SRM 53–10–01.

(vii) Repair specified in Boeing 737–100/ 200 SRM 53–30–03, Figure 32.

(2) For airplanes with any repair installed at the forward entry doorway or forward galley doorway, upper or lower hinge cutout, that does not meet the conditions specified in paragraph 3.A.10. of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 20012: Except as required by paragraph (l) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, contact the Manager, Seattle ACO, FAA, for instructions using the procedures specified in paragraph (o) of this AD and do the actions required by the FAA.

(l) New Exception to Service Bulletin Specifications

(1) Where Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, specifies a compliance time after the issue date of Boeing Service Bulletin 737–53A1200, Revision 1, dated July 7, 2011, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Service Bulletin 737–53A1200, Revision 2, dated September 12, 2012, specifies to contact Boeing for further instructions, this AD requires contacting the Manager, Seattle Aircraft Certification Office (ACO), FAA, for instructions and doing the actions required by the FAA, using the procedures specified in paragraph (o) of this AD

(m) Exception for Group 5 Airplanes

For Group 5 airplanes identified in Boeing Service Bulletin 737–53A1200, Revision 2,

dated September 12, 2012: Before further flight, contact the Manager, Seattle ACO, FAA, for instructions using the procedures specified in paragraph (o) of this AD and do the actions required by the FAA.

(n) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (j) and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1200, Revision 1, dated July 7, 2011, which is not incorporated by reference in this AD.

(o) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with paragraphs (f) and (i) of AD 2008–11–04, Amendment 39–15526 (73 FR 29421, May 21, 2008), are approved as AMOCs for the corresponding provisions of paragraphs (g) and (i) of this AD.

(p) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *Alan.Pohl@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 4, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08908 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 107

[Docket No. FDA–2013–N–0067]

Infant Formula: The Addition of Minimum and Maximum Levels of Selenium to Infant Formula and Related Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations on nutrient specifications and labeling for infant formula to add the mineral selenium to the list of required nutrients and to establish minimum and maximum levels of selenium in infant formula.

DATES: Submit either electronic or written comments on the proposed rule by July 1, 2013. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by May 16, 2013, (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0067, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document):

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following way:

- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0067 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''How Do You Submit Comments on This Rule?'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: With regard to the proposed rule: Benson M. Silverman, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 240–402–1450.

With regard to the information collection issues: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the background of this proposed rule?

Section 412(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350a(i)) establishes requirements for the nutrient content of infant formulas. Under section 412(i)(2) of the FD&C Act, the Secretary of Health and Human Services (the Secretary) is authorized to revise the list of required nutrients and the required level for any required nutrient, which authority has been delegated to the Commissioner of Food and Drugs (the Commissioner). The table in section 412(i) of the FD&C Act and FDA regulations, 21 CFR 107.100, specify that infant formulas must contain 29 nutrients; minimum levels for each nutrient and maximum levels for 9 of the nutrients are also specified.

At the time FDA established nutrient specifications for infant formula, selenium was not recognized as an essential nutrient and was not one of the nutrients required by statute in infant formula. As explained in detail in this document, selenium has subsequently been recognized as an essential nutrient. Therefore, we are proposing to amend the nutrient specifications for infant

formula in § 107.100 to include selenium as a required nutrient and to establish minimum and maximum values for selenium. We are also proposing to amend the labeling requirements for infant formula in 21 CFR 107.10 to add selenium to the list of nutrients along with the requirement to list the amount of selenium per 100 kilocalories in the formula.

Selenium is an essential trace element for humans that functions largely through an association with proteins known as selenoproteins. The known biological functions of selenium include defense against oxidative stress, regulation of thyroid hormone action, and regulation of the oxidation/reduction status of vitamin C and other molecules.

Plant foods are the major dietary sources of selenium although selenium is also found in some meats, seafood, and nuts. The selenium content of a food depends on the selenium content of the soil where the plant was grown or where the animal was raised. In the United States, food distribution patterns across the country help prevent people living in geographic areas with low-selenium levels in the soil from having low dietary selenium intakes. Keshan disease, a cardiomyopathy that occurs almost exclusively in children, has been linked to selenium deficiency. Keshan disease occurs in areas of China where the population has severe selenium deficiency. Chronic selenium toxicity (selenosis) has also been observed in persons consuming diets containing high levels of selenium. Reported characteristics include hair and nail brittleness and loss, gastrointestinal upsets, skin rash, garlic breath odor, fatigue, irritability, and nervous system abnormalities. Acute selenium toxicity is rare and the few reports in the literature of acute fatal or near fatal selenium poisoning have occurred because of accidental or suicidal ingestion of selenium (Ref. 1).

In the United States, selenium is not routinely added to food. An exception is infant formula, a food that is intended to be the sole source of nutrition for infants and therefore, must provide sufficient amounts of all nutrients essential for infants. In 1989, the Food and Nutrition Board of the National Research Council established a Recommended Dietary Allowance (RDA) for selenium for infants 0 to 6 months of age of 10.0 micrograms per day (μg/day), a level extrapolated from adult values on the basis of body weight and with a factor allowed for growth (Ref. 2). Although selenium is not currently required in infant formula by § 107.100, all U.S. manufacturers are adding selenium to their infant formulas. Based on labeling information, currently marketed infant formulas contain 1.8 μg to 3.0 μg selenium per 100 kilocalorie (kcal) of formula.

II. What levels of selenium are we proposing for infant formula?

As discussed in more detail in this document, we are proposing 2.0 μg selenium/100 kcal as the minimum level for selenium in infant formulas and 7.0 μg/100 kcal as the maximum level of selenium in infant formulas

III. What scientific evidence did we consider for the proposed requirement to add selenium to infant formulas?

In order to add a selenium requirement and to establish minimum and maximum levels of selenium in infant formula, we first identified and reviewed three relevant technical reports on recommended nutrient levels for formulas for term infants and nutrient needs of healthy term infants: (1) The Life Sciences Research Office (LSRO) report ''Assessment of Nutrient Requirements for Infant Formulas'' (Ref. 3); (2) ''Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids'' (Ref. 1); and (3) ''Global Standard for the Composition of Infant Formula: Recommendations of an ESPGHAN Coordinated International Expert Group'' (Ref. 4). These reports are referred to as the LSRO report, the Institute of Medicine (IOM) report, and the European Society on Pediatric Gastroenterology, Hepatology, and Nutrition (ESPGHAN) report, respectively, in the remainder of this proposal. We also searched the published scientific literature from 1998 through 2012 for published studies not included in these reports or not identified in a 2008 published study by Daniels et al. (Ref. 5). (The Daniels et al. study is discussed in this section of the document.)

A. Available Evidence for Setting a Minimum Level of Selenium in Infant Formula

1. LSRO Report

In 1998, Raiten et al. published a report summarizing the scientific literature on the nutrient needs of healthy term infants, with an emphasis on research studies published since 1983 (Ref. 3). The report was prepared for FDA's Center for Food Safety and Applied Nutrition and Health Canada's Health Protection Branch by the LSRO in consultation with expert scientists and professional organizations involved in the field of infant nutrition. The goal of the deliberations of this LSRO Expert Panel was to provide recommendations for nutrient content of infant formulas that could serve as the sole source of nutrition for term infants throughout the first year of life.

On the basis of the evidence for the dietary essentiality of selenium, the LSRO Expert Panel recommended that selenium be included as a required nutrient in infant formula. The Panel also recommended a minimum selenium content of 1.5 μg/100 kcal (10.0 μg/liter (L)), which) and a maximum level of 5.0 μg/100 kcal (33.5 μg/L). The minimum value approximated the estimated value for the mean minus one standard deviation (SD) for the selenium concentration in human milk in countries in which selenium deficiency has not been recognized in breast-fed infants. This recommended minimum level would provide an estimated 7.5 μg/day of selenium for young infants exclusively fed infant formula,[1] an amount below the 1989 RDA (10.0 μg/day). The LSRO Panel was aware that there were disparities between some of its recommendations for nutrient levels in infant formulas and the 1989 RDAs; however, the history of use for a large population in which selenium deficiency has not been reported was regarded as a reasonable basis for recommending a minimum value for selenium in infant formula.

2. IOM Report

In 2000, the IOM published Dietary Reference Intakes (DRI) for selenium. The DRI concept evolved from the Recommended Dietary Allowances reports that have been published periodically since 1941 by the National Academies of Science. As described by the IOM (Ref. 1), the term Dietary Reference Intake encompasses three nutrient-based reference values in addition to the RDA. The RDA and the three nutrient-based reference values were described by the IOM as follows:

- *The Recommended Dietary Allowance* (RDA) is the average dietary intake level that is sufficient to meet the nutrient requirements of nearly all (97 to 98 percent) healthy individuals in a particular life stage and gender group.

[1] This estimate is based on a calculation used to convert nutrient intake values (e.g., milligram (mg)/day) to formula nutrient content values (e.g., mg/100 kcal) (Raiten, et al., 1998; Koletzko, et al, 2006). The calculation is based on the following assumptions: (1) The mean intake of formulas for infants 0 to 6 months of age is 750 milliliter (ml)/day; (2) a representative body weight for infants over this period is 5 kilogram (kg); and (3) a representative caloric intake of infants over this period is 500 kcal/day (or 100 kcal/kg/day).

The RDA is intended to be the goal for daily intake by individuals.

• *The Estimated Average Requirement* (EAR) is the daily intake value that is estimated to meet the requirement, as defined by the specified indicator of adequacy, in half of the healthy individuals in a life stage and gender group. The EAR is used to set the RDA. If the standard deviation (SD) of the EAR is available and the requirement for the nutrient is normally distributed, the RDA is defined as the EAR plus two SDs of the EAR.

• *An Adequate Intake* (AI) is established for a nutrient when sufficient scientific evidence is not available to calculate an EAR. An AI is based on experimentally-derived intake levels of approximations of observed mean nutrient intakes by a group of healthy people. The AI for children and adults is expected to meet or exceed the amount needed to maintain a defined nutritional state or exceed the amount needed to maintain a defined nutritional state or criterion of adequacy in essentially all members of a specific healthy population because it is set using healthy populations. Like the RDA, the AI is intended to be the goal for individual intake and it is intended to cover the needs of nearly all persons in a life stage group.

• *The Tolerable Upper Intake Level* (UL) is the highest daily intake level of a nutrient that is likely to pose no risk of adverse health effects in almost all individuals in a life stage group.

At the time of its report, the IOM did not find sufficient evidence to calculate an EAR for selenium for infants during the first year of life and, therefore, did not have a basis to set an RDA for selenium for infants. For this reason, the IOM set an AI for selenium for infants 0 to 6 months of age, the age when the recommended sole source of nutrition is human milk, infant formula, or a combination of the two.

The IOM's primary basis for deriving an AI for most nutrients for the first 6 months of life was the average intake by full term infants born to healthy, well-nourished mothers and exclusively fed human milk. To derive the AI values for infants ages 0 to 6 months of age, the mean intake of a nutrient was calculated based on the average concentration of the nutrient in human milk from 2 to 6 months of lactation, using agreed-upon values from several reported studies and an average volume of milk intake. To calculate the AI for selenium, IOM used the average concentration of selenium in human milk from mothers in the United States and Canada (18.0 µg/L) and an intake of 0.78 L/day, as reported from differences in weights of full-term infants before and after feedings. A reference weight of 7 kg for infants 2 to 6 months of age, adapted from National Health and Nutrition Examination Survey (NHANES) III 1988–1994 data (Ref. 6), was used by the IOM to calculate the AI on a body weight basis. (Ref. 1). The IOM established a selenium AI of 15.0 µg/day (approximately 2.1 µg/kg body weight/day) for infants 0 to 6 months of age (IOM, 2000). Assuming a typical intake of 100 kcal/kg/day for infants 0 to 6 months of age, this approximates a need for selenium, relative to energy consumption, of 2.1 µg/100 kcal.

3. ESPGHAN Report

In 2005, an International Expert Group (IEG) coordinated by the Committee on Nutrition of the ESPGHAN prepared a report on nutrient levels in infant formula, based on scientific analysis and taking into account existing scientific reports on current infant formula nutrient content (Ref. 4). The report was prepared at the request of the Codex Committee on Nutrition and Foods for Special Dietary Uses for use by that Committee in revising the Codex Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants (Codex Stan 72–1981) (Ref. 7). The goal of establishing minimum and maximum nutrient values for the Codex standard was to ensure that infant formulas adhering to the Standard would be safe and would meet infants' normal nutritional requirements.

The ESPGHAN IEG reported that their recommended minimum nutrient values were based on scientific evidence of the amounts needed to meet infants' nutritional requirements when such information was available. When scientific information was lacking, an established history of apparent safe use was taken into account. The IEG recommended a minimum selenium value of 1 µg/100 kcal for infant formula and they indicated that the reported median selenium content of human milk and values set for infant reference nutrient intakes formed the basis for their recommendation. Further detail was not provided on how this information was used by the IEG in making their recommendation.

4. Recent Published Literature

One recent report in the published scientific literature also provides important information on necessary infant selenium intake levels. Daniels, et al. reported the results of a randomized, double-blinded dose-response study of healthy term infants fed infant formula containing selenium at three concentrations (6.0 µg/liter, 13.0 µg/liter, or 21.0 µg/liter) and a breast-fed reference group (Ref. 5). The concentrations of selenium in the study formulas correspond to 0.9 µg/100 kcal (low selenium control), 1.9 µg/100 kcal, and 3.1 µg/100 kcal, respectively. The mean concentration of selenium in breast milk reported in this study was 11.0 µg/liter (1.6 µg/100 kcal). Infants participating in the study consumed the assigned infant formula or breast milk as the sole source of nutrition from birth to 16 weeks of age.

Consumption of formulas containing both of the higher levels of selenium (1.9 µg/100 kcal and 3.1 µg/100 kcal) resulted in changes in plasma and erythrocyte indicators of selenium status at the end of the study that did not differ statistically from each other or from the breast-fed control group. However, indicators of selenium status for all of these groups differed statistically from the plasma and erythrocyte indicators of selenium status in the infants fed the control formula containing only 0.9 µg selenium/100 kcal. A dose-related increase in urinary selenium excretion in the formula-fed groups was also reported. When infants consumed formulas containing selenium at levels of 1.9 µg/100 kcal or 3.1 µg/100 kcal, there were no statistically significant dose-related changes in plasma and erythrocyte indicators of selenium status. However, there was a statistically significant increase in urinary selenium excretion in the infants fed the formula containing 3.1 µg/100 kcal compared to the infants fed the formula containing 1.9 µg/100 kcal. This latter finding, in combination with the finding of no dose-related changes in the circulating indicators of selenium status, suggests that infants fed the formula containing a level of 1.9 µg selenium/100 kcal received sufficient selenium to meet their nutritional needs and that by virtue of the body's homeostatic mechanisms, it would appear that much of the selenium intake above the level of 1.9 µg selenium/100 kcal was eliminated from the body.

B. Available Evidence for Setting a Maximum Level for Selenium in Infant Formula

1. LSRO Report

The LSRO Expert Panel recommended a maximum selenium level for infant formula of 5.0 µg/100 kcal (33.5 µg/L) (Ref. 3). This recommendation was based on the upper limit of the range of selenium in human milk, which was considered to represent a history of use for a large population in which

selenium toxicity had not been reported. The LSRO report also indicated that, on a body weight basis, this level is far below the intake associated with the development of selenosis in adults.

2. IOM Report

The IOM established an upper limit (UL) for selenium for infants 0 to 6 months of age relying on data on the concentration of selenium in human milk, which is not associated with known adverse effects. The IOM calculated an UL of 47.0 µg/day or approximately 7.0 µg/kg body weight/day for infants 0 to 6 months of age, which approximates 7.0 µg/100 kcal.

3. ESPGHAN Report

The ESPGHAN IEG recommended a maximum level of 9 µg/100 kcal for selenium in infant formula. The IEG based their recommendations for maximum nutrient values on scientific evidence regarding the absence of adverse effects, when such information was available. When scientific information was lacking, an established history of apparent safe use was taken into account. Further detail was not provided on how this information was used by the IEG in making its recommendation.

IV. Which products are subject to this proposed rule?

Products that meet the statutory definition of ''infant formula'' in section 201(z) of the FD&C Act (21 U.S.C. 321(z)) (''a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk'') are subject to this proposed rule.

V. What does this proposed rule do?

This proposed rule, if finalized, will add selenium to the list of required nutrients for infant formulas and establish minimum and maximum levels of selenium in FDA's nutrient specifications regulations for infant formulas under § 107.100(a). In addition, the proposed rule would add selenium to the list of nutrients that must be listed in the table of nutrition information required on infant formula labeling by § 107.10(a)(2).

A. Revision to § 107.100(a) Nutrient Specifications

We are proposing to mandate that selenium be added to infant formula by requiring that this mineral be listed in the table of nutrients for infant formulas in § 107.100(a). We are also proposing to establish minimum and maximum levels for selenium in infant formula because evidence exists for both deficiency and toxicity of selenium, and there is no room for error in production of a food that serves as the sole source of nutrition for infants.

1. Proposed Minimum Level of Selenium in Infant Formulas

After considering the scientific reports discussed previously in this document and evidence published by Daniels, et al. after those reports were completed, we are proposing 2.0 µg selenium/100 kcal as the minimum level for selenium in infant formulas. This proposed minimum level is based on the IOM's AI for selenium for infants 0 to 6 months of age (2.1 µg/day) (Ref. 1) and the level suggested by the data in the study by Daniels, et al. (1.9 µg/100 kcal) (Ref. 5), rounded to the nearest whole microgram. As noted, the Daniels, et al. study demonstrated that infants who consumed infant formula containing 1.9 µg selenium/100 kcal had plasma and erythrocyte indicators of selenium status that were statistically higher than those of infants consuming formula containing less selenium (0.9 µg/100 kcal) but these levels did not differ from those of infants consuming infant formula containing more selenium (3.1 µg/100 kcal). Infants consuming the formula containing 3.1 µg/100 kcal of selenium also had significantly higher urinary excretion of selenium. In the absence of statistically significant changes in plasma and erythrocyte indicators of selenium status, the substantially higher urinary excretion of selenium of the infants fed the 3.1 µg selenium formula compared to that of the infants fed the 1.9 µg selenium formula, suggests that a selenium intake of 3.1 µg/100 kcal is likely to be greater than the amount needed to meet an infant's nutritional needs. Thus, FDA tentatively concludes that 2.0 µg selenium/100 kcal is an appropriate required minimum for selenium in infant formulas.

We also propose to correct a typographical error in the table that appears in § 107.100(a). In the second column of that table, each abbreviation for ditto (''do'') will now be followed by a period.

2. Proposed Maximum Level of Selenium in Infant Formulas

FDA is also proposing to set a maximum level for selenium in infant formula of 7.0 µg/100 kcal. This level is based on the UL for infants 0 to 6 months of age established by the IOM (Ref. 1), and defined as highest level of daily nutrient intake that is likely to pose no risk of adverse health effects in the population of interest. FDA is relying on the IOM's recommendation because the IOM report was the most transparent in terms of the basis for its recommended UL. Also, unlike the minimum level, there is no study that provides direct evidence to establish a maximum level and thus, in proposing a maximum level, the agency must rely on a recommendation for an intake level that is likely to pose no risk of adverse health effects.

3. Comments Specifically Requested

We find that there is scientific evidence sufficient to support the minimum proposed level of 2.0 µg selenium/100 kcal and the proposed maximum level of 7.0 ug selenium/100 kcal, although there is less evidence directly applicable to the proposed maximum level. While we are interested in comments regarding the proposed minimum level for selenium, we are particularly interested in comments regarding the proposed maximum level of 7.0 µg selenium/100 kcal, including whether such a maximum level is needed and the scientific data or information that form the basis of any comments.

Although, in our judgment, it will be feasible for formula manufacturers to achieve consistent production of infant formulas with selenium levels that are at or above the proposed minimum level of 2.0 µg/100 kcal while not exceeding the proposed maximum level of 7.0 µg/100 kcal, we specifically request comments about whether the proposed minimum and maximum selenium levels provide sufficient flexibility and can be achieved from a practical manufacturing standpoint. In addition, because unduly high levels of nutrients should be avoided in products that serve as the sole source of nutrients for infants, a population that is particularly vulnerable to nutritional inadequacies and excesses, we are also particularly interested in receiving comments about available means to ensure that nutrient levels in infant formulas, including selenium, are not excessive.

B. Revision to § 107.10(a)(2) Nutrient Information

We are proposing to add selenium to the statement of the amounts of nutrients required for infant formula labeling in § 107.10(a)(2). This additional mineral would be required to be listed between iodine and sodium, as directed by § 107.10(b)(5).

VI. What is the legal authority for this proposed rule?

Section 412(i) of the FD&C Act contains a table of nutrients (including

minimum and, in some cases, maximum levels for such nutrients) that are required to be in an infant formula. Section 412(i)(2) of the FD&C Act authorizes the Secretary to revise the statutory table of nutrients and to revise the level of any required nutrient. The Secretary has delegated this authority to the Commissioner. In the **Federal Register** of October 31, 1985, FDA published a final rule revising the statutory table of nutrients, which was published as § 107.100. This proposed rule, if finalized, would amend § 107.100. Accordingly, the legal authority for the proposed revision to § 107.100, which revises the statutory list of nutrients required for infant formula, is section 412(i)(2) of the FD&C Act.

Additionally, this proposed rule, if finalized, would require the addition of selenium to the statement of the amounts of nutrients required for infant formula labeling in § 107.10(a)(2). As noted previously in this document, ''infant formula'' is defined as a food for ''special dietary use'' under section 201(z) of the FD&C Act. Under sections 403(j) and 701(e) of the FD&C Act (21 U.S.C. 343(j) and 21 U.S.C. 371(e)), the Secretary, and by delegation the Commissioner, may prescribe regulations concerning the vitamin and mineral content of foods for special dietary uses, in order to fully inform purchasers as to the value of the food for such uses. As such, FDA has the authority to revise the statement of the amounts of nutrients required for infant formula labeling in § 107.10(a)(2) under sections 201(z), 403(j), 412(i), and 701(e) of the FD&C Act. When the Agency issues a final rule for the provisions in proposed § 107.10(a)(2), it will provide an opportunity for filing objections and requests for a formal evidentiary public hearing under 21 CFR part 12.

VII. What is the environmental impact of this proposed rule?

FDA has determined under 21 CFR 25.32(n) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because only one firm is affected by this rule, and it is considered large by Small Business Administration standards, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal Mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

X. Regulatory Impact Analysis

A. Need for This Regulation

FDA is proposing to amend its infant formula nutrient requirement regulations. If the proposed rule is finalized, infant formulas will be required to contain selenium at a level not less than 2.0 µg and not more than 7.0 µg for each 100 kilocalories of the infant formula in the form prepared for consumption as directed on the container. This regulation is needed because selenium is now recognized as an essential nutrient for humans.

Additionally, if finalized, this proposed rule will require that infant formula manufacturers add selenium to the list of nutrients on infant formula labels, and to list the amount of selenium per 100 kilocalories in the formula.

Selenium is a trace mineral that is essential to good health but required only in small amounts. Selenium is incorporated into proteins to make selenoproteins, which are important antioxidant enzymes, the natural by-products of oxygen metabolism that may contribute to the development of chronic diseases such as cancer and heart disease. In most countries throughout the world, plant foods are major dietary sources of selenium. However, selenium is also found in some meats, seafood, and nuts. In the United States, food distribution patterns across the country help prevent people in geographic areas with low-selenium levels in the soil from having low dietary selenium intakes. Food is not generally fortified with selenium in the United States, but an exception to this is infant formula.

B. Regulatory Options

In formulating the analysis of this proposed rule, three options were analyzed: (1) No new regulatory action (baseline); (2) require the provisions of this proposed rule and make the provisions of the rule effective 180 days after publication; and (3) require the provisions of this proposed rule, but make the provisions of the rule effective 12 months after publication.

Option 1: No New Regulatory Action (Baseline)

The first option is no new regulatory action. We include it here because OMB cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. There are zero costs and benefits associated with this option, and it serves as the baseline against which other options will be measured for assessing costs and benefits.

Option 2: Finalize the proposed rule and make the provisions effective 180 days after publication.

XI. Costs

One cost of this proposal, if finalized, will be reformulation costs resulting from firms adding selenium to infant formulas in order to comply with this rule. Currently, there are five firms that produce infant formula in the United States. Of these firms, only one will need to add slightly more selenium to its infant formulas. Based on information provided by the infant formula industry, it appears that all other infant formula manufacturers already added selenium to their infant formula products at a level within the range identified by the proposed rule. Therefore, any reformulation cost of this proposal will come from a single firm adding slightly more selenium to its infant formula products that currently do not meet the proposed minimum level of 2.0 µg/100 kcal.

Table 1 of this document outlines low, medium, and high cost estimates based on a change in the formulation of infant formula. Costs are estimated using a reformulation model, developed under contract with Research Triangle Institute (RTI). This model provides estimates of the costs of reformulation of the range of food, dietary supplement, and cosmetic products under FDA's jurisdiction, including infant formulas, and has been adjusted to reflect 2012 dollars. In this model, the cost of the reformulation depends on the affected ingredient and the likely response of manufacturers. The cost per infant formula associated with reformulation is estimated to be a function of product research, product development, coordinating activities, startup and verification, and nutrient testing of finished product. To the extent that any of these activities is not necessary for adding selenium to an infant formula that already has selenium added, costs will be overestimated. Table 1 of this document presents total estimated low, medium, and high costs of reformulation for this proposed rule. The totals are based on the reformulation of 46 separate infant formulas manufactured by one firm, the current formulation of which would not meet the requirements of this rule, if finalized. Therefore, the total industry costs are each of the low, medium, and high costs multiplied by 46.

TABLE 1—ESTIMATION OF FIRST-YEAR COSTS OF INFANT FORMULA REFORMULATION, PER INFANT FORMULA

Variable	Low	Medium	High
Product Research	$1,685	$16,853	$33,706
Product Development	4,598	13,023	28,259
Coordinating Activities	2,938	8,818	14,690
Startup and Verification	1,442	7,207	15,890
Nutrient Testing of the Finished Product	15	15	15
Total Per Formula	10,678	45,916	92,560
Total Industry Cost of Reformulation (Cost × 46 infant formulas)	497,188	2,112,136	4,257,760

Another component of the costs of this option is cost related to the relabeling of reformulated infant formula. The proposed rule requires infant formula manufacturers to include selenium in the nutrient content statement on containers of infant formula. All manufacturers currently disclose selenium in the nutrient list as specified under § 107.10(b)(5). However, as noted previously in this document, one manufacturer would be required to add more selenium to its formulas under this proposal. Therefore, it is estimated that the same firm that would be required to add more selenium to its formulas under this proposal will also incur relabeling costs to comply with this proposed rule.

Table 2 of this document outlines low, medium, and high cost estimates of relabeling based on a minor change to the infant formula label and an effective date of 180 days after publication. Costs are estimated using a relabeling model developed under contract by RTI. This model estimates the costs of relabeling food, dietary supplements, and cosmetic products under FDA's jurisdiction and these estimates have been adjusted to reflect 2012 dollars. In this model, relabeling costs depend on the type of change (major, minor, or extensive) and the effective date of the rule. This model estimates that longer periods of time before a rule becomes effective are associated with lower relabeling costs because any change is more likely to be able to be coordinated with a change in a label that may already be scheduled, and will diminish the need to, for example, purchase and apply stickers to packages affected by the change. The Agency acknowledges the uncertainty in this estimation and how it may specifically apply to the infant formula industry and requests comment regarding the extent to which the effective date is likely to affect the cost of compliance with this proposed rule.

TABLE 2—ESTIMATED FIRST YEAR RELABELING COSTS

Low	Medium	High
$3,565,880	$8,735,802	$23,619,959

The final component of cost is related to one firm assembling information for submission to the Agency related to the reformulated infant formulas, as required under section 412(d)(3) of the FD&C Act. The addition of more selenium constitutes a change in the formulation of these formulas that the Agency considers may affect whether the formulas are adulterated; therefore, we are including the submission of information about the change in the formulas before the first processing of such formulas as a cost.

It is estimated that a scientist from one firm will spend 10 hours assembling the information to be submitted, which will address the 46 reformulated infant formulas. This is estimated as a one-time cost. It is estimated that this scientist is paid a wage of $52.88; that is, $35.25 plus 50 percent overhead. Therefore, 10 hours × $52.88 = $528.80.

TABLE 3—SUMMARY OF TOTAL COST OF OPTION 1

	Low	Medium	High
Reformulation Cost	$491,188	$2,112,136	$4,257,760.
First Year Relabeling Costs	$3,467,560	$8,735,802	$23,619,959.
First Year Submission Costs	$529	$529	$529.
Total Cost of Option 1	$3.95 million	$10.85 million	$27.88 million.

As seen in table 3 of this document, the total cost of this option ranges from $3.95 million to $27.88 million, with the majority of cost coming from relabeling.

XII. Benefits

The potential benefits from this proposed rule, if finalized, are any cases of selenium deficiency that are avoided as a result of infant formulas meeting the 2.0 µg/100 kcal requirement. However, selenium deficiency is extremely rare, occurring primarily in areas of the world where the levels of selenium in the environment are low, such as China (Ref. 1). Therefore, it is not possible to quantify benefits accrued as a result of this rule and benefits will be discussed qualitatively.

The consequences of selenium deficiency may be of greatest concern in infants and children, who have relatively greater requirements for selenium than adults due to their rapid growth (Ref. 1). According to Daniels, et al. (2008), suboptimal selenium status is associated with a range of negative health outcomes including thyroid and immune dysfunction, viral infection, cardiovascular disease, inflammatory conditions, infertility, and an increased risk of some cancers (Ref. 5). Overt selenium deficiency is manifested as Keshan disease, an endemic fatal cardiomyopathy. Because infant formula may be an infant's only source of nutrition, the potential for developing a deficiency is averted if selenium is added to the formula.

XIII. Summary of Costs and Benefits of This Proposed Rule

The total costs of this proposed rule, if finalized, consist of one time reformulation costs, one time submission costs and one time relabeling costs. The total cost ranges between about $4 million and $28 million. Because the costs of this proposed rule are one time only costs, no annual costs are estimated for this proposal. Furthermore, because selenium deficiency is so rare, it is not possible to quantify benefits from any final rule resulting from this proposal.

Option 3: Finalize the proposed rule and make the provisions effective 12 months after publication.

In this option, firms are required to meet the requirements of the proposed rule for infant formula, that is, have formulas contain selenium at 2.0 µg and not more than 7.0 µg for each 100 kilocalories of the infant formula, and have manufacturers add selenium to the list of nutrients on infant formula labels. However, under Option 3, industry would have at least 12 months before they were required to comply with the rule.

XIV. Costs of Option 3

For this option, the primary costs of this proposed rule will be reformulation costs resulting from the firm that needs to add slightly more selenium to certain infant formulas in order to comply with any final rule resulting from this proposal, along with relabeling and submission costs. These costs are presented in 2012 dollars. In contrast to Option 2, relabeling costs for this option are less, because of the estimation of the cost model that, over a longer period of time, any labeling change is more likely to be able to be coordinated with a change in a label that may already be scheduled, and will diminish the need to, for example, purchase and apply stickers to packages affected by the change. As in Option 2, the Agency acknowledges the uncertainty in this estimation and how it may specifically apply to the infant formula industry and requests comment regarding the extent to which the effective date is likely to affect the cost of compliance with this proposed rule.

TABLE 4—SUMMARY OF COSTS OF OPTION 3

	Low	Medium	High
Reformulation Cost	$491,188	$2,112,136	$4,257,760
One Time Submission Cost	529	529	529
Relabeling Costs	438,747	765,439	1,271,285
Total Cost of Option 3	930,464	2,878,104	5,529,574

Therefore, the costs from this rule, as shown in table 4, range from about $930,464 to about $5.5 million.

XV. Benefits of Option 3

Benefits from this option are identical to Option 2, however, under this option, benefits are delayed by 6 months. The potential benefits from this proposed option are any cases of selenium deficiency avoided as a result of infant formulas meeting the 2.0 ug/100kcal requirement. As stated earlier, selenium deficiency is extremely rare, occurring primarily in areas of the world where the levels of selenium in the environment are low (Ref. 1).

XVI. Preliminary Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), this proposal, if finalized, will not have a significant impact on a substantial number of small entities, as only one firm is affected by this rule and it is considered large by Small Business Administration standards.

XVII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in this section of the document with an estimate of the annual third-party disclosure burden. Included in the burden estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Third-Party Disclosure Requirements for Selenium in Infant Formula

Description of Respondents: The respondents to this information collection are manufacturers of infant formula marketed in the United States.

Description: The proposed rule, if finalized, would revise § 107.10(a) to require that selenium be listed in the nutrient list on the label for all infant formulas. In particular, in the nutrient list, selenium would be required to be listed between iodine and sodium and the amount per 100 calories declared; and, because selenium would be a required ingredient in infant formula, selenium would also be required to be declared in the formula's ingredient statement by its common or usual name and positioned according to the descending order of its predominance in the formula, under § 101.4. The present version of § 107.10(a) is approved by OMB in accordance with the PRA and has been assigned OMB control number 0910–0256. This proposed rule, if finalized, would modify the information collection associated with the present version of § 107.10(a) by adding 23 hours to the burden associated with the collection. A manufacturer not in compliance with the new minimum and maximum levels for selenium in infant formula would be required to make a one-time change to the nutrient list information disclosed to consumers on the label of its infant formula, to account for the required change in the amount of selenium in its products. The nutrient information disclosed by manufacturers on the infant formula label is necessary to inform purchasers of the value of the infant formula. As discussed previously in this document, FDA has the authority to revise the statement of the amounts of nutrients required for infant formula labeling in § 107.10(a)(2).

FDA estimates the burden of this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours	Total capital cost
§ 107.10 Nutrient labeling for infant formula.	1	46	46	0.5 (30 minutes)	23	$765,439

[1] There are no operating and maintenance costs associated with this collection of information.

FDA tentatively concludes that the additional burden to disclose selenium in the ingredient statement resulting from the proposed amendment of § 107.10 would be negligible because all U.S. infant formula manufacturers currently add selenium as an ingredient to their infant formula products, and all manufacturers currently disclose the selenium in the ingredient statement, as specified by § 101.4. Additionally, all manufacturers currently disclose selenium in the nutrient list, as required by § 107.10(b)(5). Only one manufacturer produces infant formula that would not meet the requirements of this rule, if finalized, and would thus need to be reformulated. Under proposed § 107.10(a)(2), this one manufacturer would need to make a one-time labeling change to modify its nutrient list to account for the addition of more selenium to its infant formula.

The third-party disclosure burden consists of the setup time required to design a revised label and incorporate it into the manufacturing process. Based upon its knowledge of food and dietary supplement labeling, FDA estimates that the affected manufacturer would require less than 0.5 hour per product to modify the label's nutrient list to reflect the addition of more selenium to the product. The Regulatory Impact Analysis estimates that this manufacturer produces 46 separate infant formulas that would need to be reformulated, and thus require relabeling. The one-time third-party disclosure burden for the proposed rule is estimated in table 5 of this document.

The final column of table 5 gives the estimated capital cost associated with relabeling. This is the cost of designing a revised label and incorporating it into the manufacturing process. The cost stated in table 5, $765,439, is based on the estimate in the Regulatory Impact Analysis under Option 3, which assumes that the proposed rule is finalized with an effective date of 1 year after publication. These costs are based on the estimation of the cost model that, over a longer period of time, any labeling change is more likely to be able to be coordinated with a change in a label that may already be scheduled, and will diminish the need to, for example, purchase and apply stickers to packages affected by the change. Additionally, because of the change in formulation of its products that would be required if the rule is finalized as proposed, a manufacturer would need to determine whether they are required to make a one-time submission to FDA before the first processing of its formulas, as required by section 412(d)(3) of the FD&C Act. This reporting requirement is approved by OMB under OMB control number 0910–0256. The current hour burden approved by OMB for section 412(d) of the FD&C Act is 10 hours per report. Based on the Agency's experience with infant formula submissions, FDA estimates that the affected manufacturer will submit one report that will cover all 46 reformulated infant formulas. In a future request for extension of the 0910–0256 information collection, FDA will include the additional report in its estimates.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the title ''Third-Party Disclosure Requirements for Selenium in Infant Formula.''

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by May 16, 2013, to the Office of Information and Regulatory Affairs, OMB.

XVIII. How do you submit comments on this rule?

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

XIX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Nutrition Board. Institute of Medicine. Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids. Washington, DC: National Academy Press, p. 21–33; 292–299; 315–316, 2000.
2. Food and Nutrition Board. National Research Council. Recommended Dietary Allowances. 10th Edition. Washington, DC: National Academy Press, p. 221, 1989.
3. Raiten, D. J., J. M. Talbot, and J. H. Waters, ''Assessment of Nutrient Requirements for Infant Formulas,'' *Journal of Nutrition,* 128: 2059S–2249S, 1998.
4. Koletzko, B., S. Baker, G. Cleghorn, U. F. Neto, et al., ''Global Standard for the Composition of Infant Formula. Recommendations of an ESPGHAN Coordinated International Expert Group,'' *Journal of Pediatric Gastroenterology and Nutrition,* 41:584–599, 2005.
5. Daniels, L., R.A. Gibson, K. Simmer, P. Van Dael, M. Makrides, ''Selenium Status of Term Infants Fed Selenium-Supplemented Formula in a Randomized Dose-Response Trial,'' *American Journal of Clinical Nutrition,* 88:70–76, 2008.
6. Centers for Disease Control and Prevention (CDC). National Center for Health Statistics (NCHS). National Health and Nutrition Examination Survey Data. Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2013.
7. Codex Alimentarius Commission, ''Standards for Infant Formulas for Special Medical Purposes Intended for Infants, 72–1981,'' 1981.

List of Subjects in 21 CFR Part 107

Exempt infant formulas, Food labeling, General provisions, Infant formula, Infant formula recalls, Infants and children, Labeling, Nutrition, Nutrient requirements, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 107 is proposed to be amended as follows:

PART 107—INFANT FORMULA

The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

■ 1. In § 107.10, revise paragraph (a)(2) to read as follows:

§ 107.10 Nutrient Information.

(a) * * *

(2) A statement of the amount of each of the following nutrients supplied by 100 kilocalories:

Nutrients	Unit of measurement
Protein	Grams.
Fat	Do.
Carbohydrate	Do.
Water	Do.
Linoleic acid	Milligrams.
Vitamins:	
Vitamin A	International Units.
Vitamin D	Do.
Vitamin E	Do.
Vitamin K	Micrograms.
Thiamine (Vitamin B_1).	Do.
Riboflavin (Vitamin B_2).	Do.
Vitamin B_6	Do.
Vitamin B_{12}	Do.
Niacin	Do.
Folic acid (Folacin).	Do.
Pantothenic acid.	Do.
Biotin	Do.
Vitamin C (Ascorbic acid).	Milligrams.
Choline	Do.
Inositol	Do.
Minerals:	
Calcium	Milligrams.
Phosphorus	Do.
Magnesium	Do.
Iron	Do.
Zinc	Do
Manganese	Micrograms.
Copper	Do.
Iodine	Do.
Selenium	Do.
Sodium	Milligrams.
Potassium	Do.
Chloride	Do.

* * * * *

■ 2. In § 107.100, revise paragraph (a) to read as follows:

§ 107.100 Nutrient specifications.

(a) An infant formula shall contain the following nutrients at a level not less than the minimum specified and not more than the maximum level specified for each 100 kilocalories of the infant formula in the form prepared for consumption as directed on the container:

Nutrients	Unit of measurement	Minimum level	Maximum level
Protein	Grams	1.8	4.5
Fat	do	3.3	6.0
	Percent calories	30	54
Linoleic acid	Milligrams	300	
	Percent calories	2.7	
Vitamins			
Vitamin A	International Units	250	750
Vitamin D	do	40	100
Vitamin E	do	0.7	

Nutrients	Unit of measurement	Minimum level	Maximum level
Vitamin K	Micrograms	4	
Thiamine (Vitamin B_1)	do	40	
Riboflavin (Vitamin B_2)	do	60	
Vitamin B_6	do	35	
Vitamin B_{12}	do	0.15	
Niacin [1]	do	250	
Folic Acid (folacin)	do	4	
Pantothenic acid	do	300	
Biotin [2]	do	1.5	
Vitamin C (ascorbic acid)	Milligrams	8	
Choline [2]	do	7	
Inositol [2]	do	4	
Minerals			
Calcium	do	60	
Phosphorus	do	30	
Magnesium	do	6	
Iron	do	0.15	3.0
Zinc	do	0.5	
Manganese	Micrograms	5	
Copper	do	60	
Iodine	do	5	75
Selenium	do	2	7
Sodium	Milligrams	20	60
Potassium	do	80	200
Chloride	do	55	150

[1] The generic term ''niacin'' includes niacin (nicotinic acid) and niacinamide (nicotinamide).
[2] Required only for non-milk-based infant formulas.

* * * * *

Dated: April 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08855 Filed 4–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 737, 738, and 750

[Docket ID OSM–2012–0003]

RIN 1029–AC65

Cost Recovery for Permit Processing, Administration, and Enforcement

Correction

In proposed rule document R1–2013–06950, appearing on pages 20394–20408 in the issue of Thursday, April 4, 2013, make the following correction:

§ 738.11 [Corrected]

In the table on page 20407, in the third row, fourth column, ''1,300'' should read ''13,000''.

[FR Doc. C1–2013–06950 Filed 4–15–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

34 CFR Chapter II

RIN 1810–AB17

[Docket ID ED–2013–OS–0050]

Proposed Priorities, Requirements, Definitions, and Selection Criteria—Race to the Top—District [CFDA Number: 84.416.]

AGENCY: Office of the Deputy Secretary, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary proposes priorities, requirements, definitions, and selection criteria under the Race to the Top—District program. The Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions using funds from fiscal year (FY) 2013 and later years. The Race to the Top—District program builds on the experience of States and districts in implementing reforms in the four core educational assurance areas through Race to the Top and other key programs and supports applicants that demonstrate how they can personalize education for all students in their schools. The U.S. Department of Education (Department) conducted one competition under the Race to the Top—District program in FY 2012, and we propose to maintain the overall purpose and structure of the FY 2012 Race to the Top—District competition. These proposed priorities, requirements, definitions, and selection criteria are almost identical to the ones we used in the FY 2012 competition. We describe the changes at the beginning of each section of this document.

DATES: We must receive your comments on or before May 16, 2013, and we encourage you to submit comments well in advance of this date.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure we do not receive duplicate comments, please submit your comments only once. In addition, please include the Docket ID and the phrase ''Race to the Top—District-Comments'' at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use Regulations.gov'' in the Help section.

Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to the

Office of the Deputy Secretary (Attention: Race to the Top—District—Comments), U.S. Department of Education, 400 Maryland Avenue SW., Room 7e208, Washington, DC 20202–4260.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meredith Farace. Telephone: (202) 453–6800 or by email: *racetothetop.district@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: The purpose of this document is to propose priorities, requirements, definitions, and selection criteria for the Race to the Top—District competition that would enable effective grant making and result in the selection of high-quality applicants that propose to implement activities that are most likely to support bold, locally directed improvements in learning and teaching that would directly improve student achievement and educator effectiveness.

Summary of the Major Provisions of This Regulatory Action: The Race to the Top—District program is designed to build on the momentum of other Race to the Top competitions by encouraging bold, innovative reform at the local level. The Race to the Top—District competition is aimed squarely at classrooms and the all-important relationship between educators and students. The proposed priorities, requirements, definitions, and selection criteria in this document are almost identical to those we used in the FY 2012 competition. The competition will again support applicants that demonstrate how they can personalize education for all students in their schools.

In that regard, through this action, the Department will encourage and reward those LEAs or consortia of LEAs that have the leadership and vision to implement the strategies, structures, and systems needed to implement personalized, student-focused approaches to learning and teaching that will produce excellence and ensure equity for all students. The proposed priorities, definitions, requirements, and selection criteria are designed to help LEAs meet these goals. Most changes from the FY 2012 competition reflect minor language clarifications. The two more substantive changes are the removal of the opportunity to apply for an optional budget supplement and the reduction of the minimum and maximum grant amount for which an applicant may apply. We believe these proposed changes would enable the Department to maximize the number of grantees that would receive funding under a competition, while still awarding grants of sufficient size to support bold improvements in learning and teaching.

Under Proposed Priority 1, applicants must design a personalized learning environment that uses collaborative, data-based strategies and 21st century tools such as online learning platforms, computers, mobile devices, and learning algorithms, to deliver instruction and supports tailored to the needs and goals of each student, with the aim of enabling all students to graduate college- and career-ready. Implementation of a personalized learning environment is not achieved through a single solution or product but rather requires a multi-faceted approach that addresses the individual and collective needs of students, educators, and families and that dramatically transforms the learning environment in order to improve student outcomes.

Through Race to the Top—District, the Department proposes to continue to support high-quality proposals from applicants across a varied set of LEAs in order to create diverse models of personalized learning environments for use by LEAs across the Nation. For this reason, the Department is proposing four additional priorities. Proposed Priorities 2 through 5 would support efforts to expand the types of reform efforts being implemented in LEAs in States that have received a Race to the Top award and to LEAs in other States. Moreover, these proposed priorities would also help ensure that LEAs of varying sizes, both rural and non-rural, and with different local contexts are able to implement innovative personalized learning environments for their students that can serve as models for other LEAs and help improve student achievement widely.

Finally, we propose one additional priority to support applicants that propose to extend their reforms beyond the classroom and partner with public or private entities in order to address the social, emotional, and behavioral needs of students, particularly students who attend a high-need school.

Costs and Benefits: The costs imposed on applicants by these proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and the benefits of implementing them would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. Please refer to the *Regulatory Impact Analysis* in this document for a more complete discussion of the costs and benefits of this regulatory action.

This notice provides an accounting statement that estimates that approximately up to $150 million will transfer from the Federal Government to LEAs under this program. Please refer to the accounting statement in this document for a more detailed discussion.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways the Department could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 7e208, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Race to the Top—District program is to build on the lessons learned from the State competitions conducted under the Race to the Top program and to support bold, locally directed improvements in learning and teaching that will directly improve student achievement and educator effectiveness.

Program Authority: Sections 14005 and 14006 of the American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5), as amended by section 1832(b) of Division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), and the Department of Education Appropriations Act, 2012 (Consolidated Appropriations Act, 2012) (Title III of Division F of Pub. L. 112–74).

Background

The Statutory Context and Program Overview

Race to the Top

The Race to the Top program, authorized under the ARRA (Pub. L. 111–5), is centered on four core educational reform areas:

(a) Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy;

(b) Building data systems that measure student growth and success and inform teachers and principals about how they can improve instruction;

(c) Recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and

(d) Turning around the Nation's lowest-achieving schools.

In 2010, the Department conducted Race to the Top State competitions, which provided incentives to States to adopt bold and comprehensive reforms in elementary and secondary education and laid the foundation for unprecedented innovation. A total of 46 States and the District of Columbia put together plans to implement college- and career-ready standards, use data systems to guide teaching and learning, evaluate and support teachers and school leaders, and turn around their lowest-performing schools. The Race to the Top State competitions provided States with incentives to implement large-scale, system-changing reforms designed to improve student achievement, narrow achievement gaps, and increase graduation and college enrollment rates.

The Race to the Top Assessment program, also authorized under the ARRA, supports consortia of States in developing new and better assessments aligned with high standards.

In 2011, the ARRA was amended by section 1832(b) of Division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which added an additional education reform area: strengthening the quality of early learning and development programs and increasing access to high-quality early learning programs for all children, including those with high needs. As a result, the Department had the authority to use a portion of the FY 2011 and FY 2012 appropriations for Race to the Top on the Race to the Top—Early Learning Challenge program, which is jointly administered by the Departments of Education and Health and Human Services. The Race to the Top—Early Learning Challenge supports 14 States' efforts to strengthen the quality of their early learning programs.

Race to the Top—District Competition

On May 22, 2012, the Secretary announced the Race to the Top—District program, which is designed to build on the momentum of other Race to the Top competitions by encouraging bold, innovative reform at the local level. This district-level program is authorized under sections 14005 and 14006 of the ARRA, as amended by section 1832(b) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 and the Consolidated Appropriations Act, 2012. Congress appropriated approximately $550 million for Race to the Top in FY 2012. Of these funds, the Department awarded approximately $383 million to 16 Race to the Top—District grantees representing 55 LEAs, with grants ranging from $10 to $40 million. The amount of an award for which an applicant was eligible to apply depended upon the number of students who would be served under the application.

The Race to the Top—District competition is aimed squarely at classrooms and the all-important relationship between educators and students. The proposed priorities, requirements, definitions, and selection criteria in this document are almost identical to those we used in the FY 2012 competition. The competition will again support applicants that demonstrate how they can personalize education for all students in their schools.

In that regard, the Race to the Top—District program will encourage and reward those LEAs or consortia of LEAs that have the leadership and vision to implement the strategies, structures, and systems needed to implement personalized, student-focused approaches to learning and teaching that will produce excellence and ensure equity for all students. The proposed priorities, definitions, requirements, and selection criteria in this notice are designed to help LEAs meet these goals.

Under Proposed Priority 1, applicants must design a personalized learning environment that uses collaborative, data-based strategies and 21st century tools such as online learning platforms, computers, mobile devices, and learning algorithms, to deliver instruction and supports tailored to the needs and goals of each student, with the aim of enabling all students to graduate college- and career-ready. Implementation of a personalized learning environment is not achieved through a single solution or product but rather requires a multi-faceted approach that addresses the individual and collective needs of students, educators, and families and that dramatically transforms the learning environment in order to improve student outcomes.

The Secretary believes that teacher and student classroom interaction, supported by strong principals and engaged families, is crucial to educating students. Teacher and student interactions are strengthened when an effective teacher has useful information about students' particular needs, support from his or her principal or leadership team, a quality curriculum aligned with college- and career-ready standards, and the other tools needed to do the job.

Too often, however, these supportive conditions have not existed in our schools or districts, and the results are painfully predictable: students fall behind or drop out, achievement gaps remain or widen, teachers get frustrated and leave the field, and stakeholders become polarized and divided under pressure to perform.

That is why—for more than four years—the Department has supported bold reforms at the State and local levels that have reduced barriers to good teaching and helped create better conditions for learning.

There is no single approach or boutique solution to implementation of personalized learning environments. An LEA or consortium of LEAs receiving an award under this competition will build on the experience of States and districts in implementing reforms in the four core educational assurance areas (as defined in this notice) through Race to the Top and other key programs. A successful applicant will provide teachers the information, tools, and

supports that enable them to meet the needs of each student and substantially accelerate and deepen each student's learning. These LEAs will have the policies, systems, infrastructure, capacity, and culture to enable teachers, teacher teams, and school leaders to continuously focus on improving individual student achievement and closing achievement gaps. These LEAs will also make equity and access a priority and aim to prepare each student to master the content and skills required for college- and career-readiness, provide each student the opportunity to pursue a rigorous course of study, and accelerate and deepen students' learning through attention to their individual needs. As important, they will create opportunities for students to identify and pursue areas of personal academic interest—all while ensuring that each student masters critical areas identified in college- and career-ready standards or college- and career-ready high school graduation requirements.

Educators want a way to inspire and challenge those students who are furthest ahead, provide targeted help and assistance to those furthest behind, and engage fully and effectively with the students in the middle. To accomplish this objective, educators across the country have created personalized learning environments and used strategies that involve such elements as technology, virtual and blended learning, individual and group tasks, partnering with parents, and aligning non-school hours with the educational needs of students.

Personalized learning environments allow students to: understand their individual learning goals and needs; access deep learning experiences that include individual and group tasks; and develop such skills and traits as goal setting, teamwork, perseverance, critical thinking, communications, creativity, and problem solving across multiple academic domains. If students are to do this successfully, both students and educators need opportunities to build their individual and collective capacity to support the implementation of personalized learning environments and strategies.

The Race to the Top—District program does not create new stand-alone programs, or support niche programs or interventions. Nor is it a vehicle for maintenance of the status quo. Rather, the Race to the Top—District program will support LEAs that demonstrate their commitment to identifying teachers, principals, and schools who have a vision and the expertise to personalize education and extend their reach to all of their students. LEAs successfully implementing an approach to learning and teaching that includes personalized learning environments will lay a foundation for raising student achievement, decreasing the achievement gap across student groups, and increasing the rates at which students graduate from high school prepared for college and careers.

The Department is also proposing to continue to support high-quality proposals from applicants across a varied set of LEAs in order to create diverse models of personalized learning environments for use by LEAs across the Nation. For this reason, the Department is proposing four additional priorities—Proposed Priorities 2 through 5—through which the Department will support efforts to expand the types of reform efforts being implemented in LEAs in States that have received a Race to the Top award and to LEAs in other States. Moreover, these proposed priorities would also help ensure that LEAs of varying sizes, both rural and non-rural, and with different local contexts are able to implement innovative personalized learning environments for their students that can serve as models for other LEAs and help improve student achievement widely.

Finally, we proposed one additional priority to support applicants that propose to extend their reforms beyond the classroom and partner with public or private entities in order to address the social, emotional, and behavioral needs of students, particularly students who attend a high-need school. This priority aligns with other Department programs, such as the Promise Neighborhoods program, and further amplifies the Department's commitment to improve education as well as family and community supports. We believe that this will help children and youth in communities with these partnerships access great schools and the complementary family and community supports that will help prepare them to attain an excellent education and successfully transition to college and a career.

Changes From the FY 2012 Competition

These proposed priorities, requirements, definitions, and selection criteria maintain the overall purpose and structure of the FY 2012 Race to the Top—District competition, and include almost identical language to the FY 2012 competition. At the beginning of the proposed priorities, requirements, definitions, and selection criteria sections, we list all of the differences between the FY 2012 notice inviting applications and this document. Most differences reflect minor language clarifications or changes to ensure language is appropriate for a notice of proposed priorities, definitions, requirements, and selection criteria, as compared to a notice inviting applications. The two more substantive changes are the removal of the opportunity to apply for an optional budget supplement and the reduction of the minimum and maximum grant amount for which an applicant may apply. We believe these proposed changes will enable the Department to maximize the number of grantees that receive funding under a competition, while still awarding grants of sufficient size to support bold improvements in learning and teaching.

Proposed Priorities

Changes From the FY 2012 Competition

(a) In Proposed Priority 6, sub-bullet (2), we propose changing ''and'' to ''or'' in ''educational results or other educational outcomes'', and we separate the sentence with an ''(a)'' and ''(b)''. These edits do not change the meaning, but help to clarify that educational results or outcomes, and family and community supports, are two distinct categories.

—New: ''Identify not more than 10 population-level desired results for students in the LEA or consortium of LEAs that align with and support the applicant's broader Race to the Top—District proposal. These results must include both (a) educational results or other education outcomes (e.g., children enter kindergarten prepared to succeed in school, children exit third grade reading at grade level, and students graduate from high school college- and career-ready) and (b) family and community supports (as defined in this notice) results;''

—Original: ''Identify not more than 10 population-level desired results for students in the LEA or consortium of LEAs that align with and support the applicant's broader Race to the Top—District proposal. These results must include both educational results and other education outcomes (e.g., children enter kindergarten prepared to succeed in school, children exit third grade reading at grade level, and students graduate from high school college- and career-ready) and family and community supports (as defined in this notice) results;''

Proposed priorities: The Secretary proposes six priorities. The Department may apply one or more of these priorities in any year in which a competition for program funds is held. In addition, in any year in which a Race

to the Top—District competition is held, we may include priorities from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 DR 276637).

Proposed Priority 1: Personalized Learning Environments. To meet this priority, an applicant must coherently and comprehensively address how it will build on the core educational assurance areas (as defined in this notice) to create learning environments that are designed to significantly improve learning and teaching through the personalization of strategies, tools, and supports for students and educators that are aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice); accelerate student achievement and deepen student learning by meeting the academic needs of each student; increase the effectiveness of educators; expand student access to the most effective educators; decrease achievement gaps across student groups; and increase the rates at which students graduate from high school prepared for college and careers.

Proposed Priority 2: Non-Rural LEAs in Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in non-rural LEAs in States that received awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Proposed Priority 3: Rural LEAs in Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in rural LEAs (as defined in this notice) in States that received awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Proposed Priority 4: Non-Rural LEAs in non-Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in non-rural LEAs in States that did not receive awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Proposed Priority 5: Rural LEAs in non-Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in rural LEAs (as defined in this notice) in States that did not receive awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Proposed Priority 6: Results, Resource Alignment, and Integrated Services. To meet this priority, an applicant must demonstrate the extent to which the applicant proposes to integrate public or private resources in a partnership designed to augment the schools' resources by providing additional student and family supports to schools that address the social, emotional, or behavioral needs of the participating students (as defined in this notice), giving highest priority to students in participating schools with high-need students (as defined in this notice). To meet this priority, an applicant's proposal does not need to be comprehensive and may provide student and family supports that focus on a subset of these needs.

To meet this priority, an applicant must—

(1) Provide a description of the coherent and sustainable partnership that it has formed with public or private organizations, such as public health, before-school, after-school, and social service providers; integrated student service providers; businesses, philanthropies, civic groups, and other community-based organizations; early learning programs; and postsecondary institutions to support the plan described in Priority 1;

(2) Identify not more than 10 population-level desired results for students in the LEA or consortium of LEAs that align with and support the applicant's broader Race to the Top—District proposal. These results must include both (a) educational results or other education outcomes (e.g., children enter kindergarten prepared to succeed in school, children exit third grade reading at grade level, and students graduate from high school college- and career-ready) and (b) family and community supports (as defined in this notice) results;

(3) Describe how the partnership would—

(a) Track the selected indicators that measure each result at the aggregate level for all children within the LEA or consortium and at the student level for the participating students (as defined in this notice);

(b) Use the data to target its resources in order to improve results for participating students (as defined in this notice), with special emphasis on students facing significant challenges, such as students with disabilities, English learners, and students affected by poverty (including highly mobile students), family instability, or other child welfare issues;

(c) Develop a strategy to scale the model beyond the participating students (as defined in this notice) to at least other high-need students (as defined in this notice) and communities in the LEA or consortium over time; and

(d) Improve results over time;

(4) Describe how the partnership would, within participating schools (as defined in this notice), integrate education and other services (e.g., services that address social-emotional, and behavioral needs, acculturation for immigrants and refugees) for participating students (as defined in this notice);

(5) Describe how the partnership and LEA or consortium would build the capacity of staff in participating schools (as defined in this notice) by providing them with tools and supports to—

(a) Assess the needs and assets of participating students (as defined in this notice) that are aligned with the partnership's goals for improving the education and family and community supports (as defined in this notice) identified by the partnership;

(b) Identify and inventory the needs and assets of the school and community that are aligned with those goals for improving the education and family and community supports (as defined in this notice) identified by the applicant;

(c) Create a decision-making process and infrastructure to select, implement, and evaluate supports that address the individual needs of participating students (as defined in this notice) and support improved results;

(d) Engage parents and families of participating students (as defined in this notice) in both decision-making about solutions to improve results over time and in addressing student, family, and school needs; and

(e) Routinely assess the applicant's progress in implementing its plan to maximize impact and resolve challenges and problems; and

(6) Identify its annual ambitious yet achievable performance measures for the proposed population-level and describe desired results for students.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Eligibility Requirements

Changes From the FY 2012 Competition

(a) In eligibility requirement (1)(a), we propose adding ''individual'' and ''one of'' to the requirement to help further describe the entities that are eligible to apply for grants under this program. This does not change the meaning, but helps clarify that every LEA, whether applying individually or as part of a consortium, must be from one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

—New: ''An applicant must be an individual LEA (as defined in this notice) or a consortium of individual LEAs from one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.''

—Original: ''An applicant must be an individual LEA (as defined in this notice) or a consortium of LEAs from the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) In eligibility requirement (1)(a)(iii), we propose adding that ''Successful applicants (i.e., grantees) from past Race to the Top—District competitions may not apply for additional funding.'' This provides an opportunity for a greater number of LEAs nationwide to receive funding under the program.

Proposed Eligibility Requirements: The Secretary proposes the following requirements that an LEA or consortium of LEAs must meet in order to be eligible to receive funds under this competition. We may apply these requirements in any year in which this program is in effect.

(1) *Eligible applicants:* To be eligible for a grant under this competition:

(a) An applicant must be an individual LEA (as defined in this notice) or a consortium of individual LEAs from one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

(i) LEAs may apply for all or a portion of their schools, for specific grades, or for subject-area bands (e.g., lowest-performing schools, secondary schools, schools connected by a feeder pattern, middle school math, or preschool through third grade).

(ii) Consortia may include LEAs from multiple States.

(iii) Each LEA may participate in only one Race to the Top—District application. Successful applicants (i.e., grantees) from past Race to the Top—District competitions may not apply for additional funding.

(b) An applicant must serve a minimum of 2,000 participating students (as defined in this notice) or may serve fewer than 2,000 participating students (as defined in this notice) provided those students are served by a consortium of at least 10 LEAs and at least 75 percent of the students served by each LEA are participating students (as defined in this notice). An applicant must base its requested award amount on the number of participating students it proposes to serve at the time of application or within the first 100 days of the grant award.

(c) At least 40 percent of participating students (as defined in this notice) across all participating schools (as defined in this notice) must be students from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use to make awards under section 1113(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). If an applicant has not identified all participating schools (as defined in this notice) at the time of application, it must provide an assurance that within 100 days of the grant award it will meet this requirement.

(d) An applicant must demonstrate its commitment to the core educational assurance areas (as defined in this notice), including, for each LEA included in an application, an assurance signed by the LEA's superintendent or CEO that—

(i) The LEA, at a minimum, will implement no later than the 2014–2015 school year—

(A) A teacher evaluation system (as defined in this notice);

(B) A principal evaluation system (as defined in this notice); and

(C) A superintendent evaluation (as defined in this notice);

(ii) The LEA is committed to preparing all students for college or career, as demonstrated by—

(A) Being located in a State that has adopted college- and career-ready standards (as defined in this notice); or

(B) Measuring all student progress and performance against college- and career-ready graduation requirements (as defined in this notice);

(iii) The LEA has a robust data system that has, at a minimum—

(A) An individual teacher identifier with a teacher-student match; and

(B) The capability to provide timely data back to educators and their supervisors on student growth (as defined in this notice);

(iv) The LEA has the capability to receive or match student-level preschool-through-12th grade and higher education data; and

(v) The LEA ensures that any disclosure of or access to personally identifiable information in students' education records complies with the Family Educational Rights and Privacy Act (FERPA).

(e) Required signatures for the LEA or lead LEA in a consortium are those of the superintendent or CEO, local school board president, and local teacher union or association president (where applicable).

Proposed Application Requirements

Changes from the FY 2012 competition: No changes proposed.

Proposed Application Requirements: The Secretary proposes the following application requirements for the application an LEA or consortium of LEAs would submit to the Department for funding under this competition. We may apply these requirements in any year in which this program is in effect.

(1) *State comment period.* Each LEA included in an application must provide its State at least 10 business days to comment on the LEA's application and submit as part of its application package—

(a) The State's comments or, if the State declined to comment, evidence that the LEA offered the State 10 business days to comment; and

(b) The LEA's response to the State's comments (optional).

(2) *Mayor (or city or town administrator) comment period.* Each LEA included in an application must provide its mayor or other comparable official at least 10 business days to comment on the LEA's application and submit as part of its application package—

(a) The mayor or city or town administrator's comments or, if that individual declines to comment, evidence that the LEA offered such official 10 business days to comment; and

(b) The LEA's response to the mayor or city or town administrator comments (optional).

(3) *Consortium.* For LEAs applying as a consortium, the application must—

(a) Indicate, consistent with 34 CFR 75.128, whether—

(i) One member of the consortium is applying for a grant on behalf of the consortium; or

(ii) The consortium has established itself as a separate, eligible legal entity and is applying for a grant on its own behalf;

(b) Be signed by—

(i) If one member of the consortium is applying for a grant on behalf of the consortium, the superintendent or chief executive officer (CEO), local school board president, and local teacher union or association president (where applicable) of that LEA; or

(ii) If the consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf, a legal representative of the consortium; and

(c) Include, consistent with 34 CFR 75.128, for each LEA in the consortium, copies of all memoranda of understanding or other binding agreements related to the consortium. These binding agreements must—

(i) Detail the activities that each member of the consortium plans to perform;

(ii) Describe the consortium governance structure (as defined in this notice);

(iii) Bind each member of the consortium to every statement and assurance made in the application; and

(iv) Include an assurance signed by the LEA's superintendent or CEO that—

(A) The LEA, at a minimum, will implement no later than the 2014–2015 school year—

(*1*) A teacher evaluation system (as defined in this notice);

(*2*) A principal evaluation system (as defined in this notice); and

(*3*) A superintendent evaluation (as defined in this notice);

(B) The LEA is committed to preparing students for college or career, as demonstrated by—

(*1*) Being located in a State that has adopted college- and career-ready standards (as defined in this notice); or

(*2*) Measuring all student progress and performance against college- and career-ready graduation requirements (as defined in this notice);

(C) The LEA has a robust data system that has, at a minimum—

(*1*) An individual teacher identifier with a teacher-student match; and

(*2*) The capability to provide timely data back to educators and their supervisors on student growth (as defined in this notice);

(D) The LEA has the capability to receive or match student-level preschool through 12th grade and higher education data; and

(E) The LEA ensures that any disclosure of or access to personally identifiable information in students' education records complies with the FERPA; and

(v) Be signed by the superintendent or CEO, local school board president, and local teacher union or association president (where applicable).

Proposed Program Requirements

Changes from the FY 2012 competition:

(a) In program requirement (1), we propose decreasing the maximum range from 25,001+ participating students with a $30–$40 million award range to 20,001+ participating students with a $25–$30 million award range, and making the next highest range 10,001–20,000 participating students with a $20–$25 million award range. We also propose reducing the minimum award from $5 million to $4 million. We believe these changes would increase the number of grants awarded under a competition, while still awarding grants of sufficient size to support bold improvements in learning and teaching.

Proposed Program Requirements:

The Secretary proposes the following requirements for LEAs receiving funds under this competition. We may apply these requirements in any year in which this program is in effect.

(1) An applicant's budget request for all years of its project must fall within the applicable budget range as follows:

Number of participating students	Award range
2,000–5,000 or Fewer than 2,000, provided those students are served by a consortium of at least 10 LEAs and at least 75 percent of the students served by each LEA are participating students (as defined in this notice).	$4–10 million.
5,001–10,000	$10–20 million.
10,001–20,000	$20–25 million.
20,001+	$25–30 million.

The Department will not consider an application that requests a budget outside the applicable range of awards.

(2) A grantee must work with the Department and with a national evaluator or another entity designated by the Department to ensure that data collection and program design are consistent with plans to conduct a rigorous national evaluation of the program and of specific solutions and strategies pursued by individual grantees. This commitment must include, but need not be limited to—

(i) Consistent with 34 CFR 80.36 and State and local procurement procedures, grantees must include in contracts with external vendors provisions that allow contractors to provide implementation data to the LEA, the Department, the national evaluator, or other appropriate entities in ways consistent with all privacy laws and regulations.

(ii) Developing, in consultation with the national evaluator, a plan for identifying and collecting reliable and valid baseline data for program participants.

(3) LEAs must share metadata about content alignment with college- and career-ready standards (as defined in this notice) and use through open-standard registries.

(4) LEAs in which minority students or students with disabilities are disproportionately subject to discipline (as defined in this notice) and expulsion (according to data submitted through the Department's Civil Rights Data Collection, which is available at *http://ocrdata.ed.gov/*) must conduct a district assessment of the root causes of the disproportionate discipline and expulsions. These LEAs must also develop a detailed plan over the grant period to address these root causes and to reduce disproportionate discipline (as defined in this notice) and expulsions.

(5) Each grantee must make all project implementation and student data available to the Department and its authorized representatives in compliance with FERPA, as applicable.

(6) Grantees must ensure that requests for information (RFIs) and requests for proposal (RFPs) developed as part of this grant are made public, and are consistent with the requirements of State and local law.

(7) Within 100 days of award, each grantee must submit to the Department—

(i) A scope of work that is consistent with its grant application and includes specific goals, activities, deliverables, timelines, budgets, key personnel, and annual targets for key performance measures; and

(ii) An individual school implementation plan for participating schools (as defined in this notice).

(8) Within 100 days of award, each grantee must demonstrate that at least 40 percent of participating students (as defined in this notice) in participating schools (as defined in this notice) are from low-income families, based on eligibility for free or reduced-price

lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use to make awards under section 1113(a) of the ESEA.

Proposed Definitions

Changes from the FY 2012 competition: No changes proposed.

Proposed definitions:

The Secretary proposes the following definitions for terms not defined in the ARRA (or, by reference, in the ESEA). We may apply these definitions in any year in which this program is in effect.

Achievement gap means the difference in the performance between each subgroup (as defined in this notice) within a participating LEA or school and the statewide average performance of the LEA's or State's highest-achieving subgroups in reading or language arts and in mathematics as measured by the assessments required under the ESEA, as amended.

College- and career-ready graduation requirements means minimum high school graduation expectations (e.g., completion of a minimum course of study, content mastery, proficiency on college- and career-ready assessments) that are aligned with a rigorous, robust, and well-rounded curriculum and that cover a wide range of academic and technical knowledge and skills to ensure that by the time students graduate high school, they satisfy requirements for admission into credit-bearing courses commonly required by the State's public four-year degree-granting institutions.

College- and career-ready standards means content standards for kindergarten through 12th grade that build towards college- and career-ready graduation requirements (as defined in this notice). A State's college- and career-ready standards must be either (1) standards that are common to a significant number of States; or (2) standards that are approved by a State network of institutions of higher education, which must certify that students who meet the standards will not need remedial course work at the postsecondary level.

College enrollment means the enrollment of students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) and who enroll in a public institution of higher education in the State (as defined in section 101(a) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1001) within 16 months of graduation.

Consortium governance structure means the consortium's structure for carrying out its operations, including—

(1) The organizational structure of the consortium and the differentiated roles that a member LEA may hold (e.g., lead LEA, member LEA);

(2) For each differentiated role, the associated rights and responsibilities, including rights and responsibilities for adopting and implementing the consortium's proposal for a grant;

(3) The consortium's method and process (e.g., consensus, majority) for making different types of decisions (e.g., policy, operational);

(4) The protocols by which the consortium will operate, including the protocols for member LEAs to change roles or leave the consortium;

(5) The consortium's procedures for managing funds received under this grant;

(6) The terms and conditions of the memorandum of understanding or other binding agreement executed by each member LEA; and

(7) The consortium's procurement process, and evidence of each member LEA's commitment to that process.

Core educational assurance areas means the four key areas originally identified in the ARRA to support comprehensive education reform: (1) Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy; (2) building data systems that measure student growth and success, and inform teachers and principals with data about how they can improve instruction; (3) recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and (4) turning around lowest-achieving schools.

Digital learning content means learning materials and resources that can be displayed on an electronic device and shared electronically with other users. Digital learning content includes both open source and commercial content. In order to comply with the requirements of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended, any digital learning content used by grantees must be accessible to individuals with disabilities, including individuals who use screen readers. For additional information regarding the application of these laws to technology, please refer to *www.ed.gov/ocr/letters/colleague-201105-ese.pdf* and *www.ed.gov/ocr/docs/dcl-ebook-faq-201105.pdf*.

Discipline means any disciplinary measure collected by the 2009–2010 or 2011–2012 Civil Rights Data Collection (see *http://ocrdata.ed.gov*).

Educators means all education professionals and education paraprofessionals working in participating schools (as defined in this notice), including principals or other heads of a school, teachers, other professional instructional staff (e.g., staff involved in curriculum development, staff development, bilingual/English as a Second Language (ESL) specialists, or instructional staff who operate library, media, and computer centers), pupil support services staff (e.g., guidance counselors, nurses, speech pathologists), other administrators (e.g., assistant principals, discipline specialists), and education paraprofessionals (e.g., assistant teachers, bilingual/ESL instructional aides).

Effective principal means a principal whose students, overall and for each subgroup, achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice) as defined in the LEA's principal evaluation system (as defined in this notice).

Effective teacher means a teacher whose students achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice) as defined in the LEA's teacher evaluation system (as defined in this notice).

Family and community supports means—

(1) Child and youth health programs, such as physical, mental, behavioral, and emotional health programs (e.g., home visiting programs; Head Start; Early Head Start; programs to improve nutrition and fitness, reduce childhood obesity, and create healthier communities);

(2) Safety programs, such as programs in school and out of school to prevent, control, and reduce crime, violence, drug and alcohol use and gang activity; programs that address classroom and school-wide behavior and conduct; programs to prevent child abuse and neglect; programs to prevent truancy and reduce and prevent bullying and harassment; and programs to improve the physical and emotional security of the school setting as perceived, experienced, and created by students, staff, and families;

(3) Community stability programs, such as programs that: (a) Provide adult education and employment opportunities and training to improve educational levels, job skills, and readiness in order to decrease unemployment, with a goal of increasing family stability; (b) improve families' awareness of, access to, and use of a range of social services, if possible at a single location; (c) provide

unbiased, outcome-focused, and comprehensive financial education, inside and outside the classroom and at every life stage; (d) increase access to traditional financial institutions (e.g., banks and credit unions) rather than alternative financial institutions (e.g., check cashers and payday lenders); (e) help families increase their financial literacy, financial assets, and savings; (f) help families access transportation to education and employment opportunities; and (g) provide supports and services to students who are homeless, in foster care, migrant, or highly mobile; and

(4) Family and community engagement programs that are systemic, integrated, sustainable, and continue through a student's transition from K–12 schooling to college and career. These programs may include family literacy programs and programs that provide adult education and training and opportunities for family members and other members of the community to support student learning and establish high expectations for student educational achievement; mentorship programs that create positive relationships between children and adults; programs that provide for the use of such community resources as libraries, museums, television and radio stations, and local businesses to support improved student educational outcomes; programs that support the engagement of families in early learning programs and services; programs that provide guidance on how to navigate through a complex school system and how to advocate for more and improved learning opportunities; and programs that promote collaboration with educators and community organizations to improve opportunities for healthy development and learning.

Four intervention models means the turnaround model, restart model, school closure, and transformational model as defined by the final requirements for the School Improvement Grant (SIG) program, published in the **Federal Register** on October 28, 2010 (75 FR 66363).

Graduation rate means the four-year or extended-year adjusted cohort graduation rate as defined by 34 CFR 200.19(b)(1).

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

High-minority school is defined by the LEA in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the ESEA. The LEA must provide, in its Race to the Top—District application, the definition used.

Highly effective principal means a principal whose students, overall and for each subgroup, achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice) as defined under the LEA's principal evaluation system (as defined in this notice).

Highly effective teacher means a teacher whose students achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice) as defined under the LEA's teacher evaluation system (as defined in this notice).

Interoperable data system means a system that uses a common, established structure such that data can easily flow from one system to another and in which data are in a non-proprietary, open format.

Local educational agency is an entity as defined in section 9101(26) of the ESEA, except that an entity described under section 9101(26)(D) must be recognized under applicable State law as a local educational agency.

Low-performing school means a school that is in the bottom 10 percent of performance in the State, or that has significant achievement gaps, based on student academic performance in reading/language arts and mathematics on the assessments required under the ESEA, or that has a graduation rate (as defined in this notice) below 60 percent.

Metadata means information about digital learning content such as the grade or age for which it is intended, the topic or standard to which it is aligned, or the type of resource it is (e.g., video, image).

On-track indicator means a measure, available at a time sufficiently early to allow for intervention, of a single student characteristic (e.g., number of days absent, number of discipline referrals, number of credits earned), or a composite of multiple characteristics, that is both predictive of student success (e.g., students demonstrating the measure graduate at an 80 percent rate) and comprehensive of students who succeed (e.g., of all graduates, 90 percent demonstrated the indicator). Using multiple indicators that are collectively comprehensive but vary by student characteristics may be an appropriate alternative to a single indicator that applies to all students.

Open data format means data that are available in a non-proprietary, machine-readable format (e.g., Extensible Markup Language (XML) and JavaScript Object Notation (JSON)) such that they can be understood by a computer. Digital formats that require extraction, data translation such as optical character recognition, or other manipulation in order to be used in electronic systems are not machine-readable formats.

Open-standard registry means a digital platform, such as the Learning Registry, that facilitates the exchange of information about digital learning content (as defined in this notice), including (1) alignment of content with college- and career-ready standards (as defined in this notice) and (2) usage information about learning content used by educators (as defined in this notice). This digital platform must have the capability to share content information with other LEAs and with State educational agencies.

Participating school means a school that is identified by the applicant and chooses to work with the applicant to implement the plan under Priority 1, either in one or more specific grade spans or subject areas or throughout the entire school and affecting a significant number of its students.

Participating student means a student enrolled in a participating school (as defined in this notice) and who is directly served by an applicant's plan under Priority 1.

Persistently lowest-achieving school means, as determined by the State, consistent with the requirements of the SIG program authorized by section 1003(g) of the ESEA,[1] (1) any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate (as defined in this notice) that is less than 60 percent over a number of years; and (2) any secondary school that is eligible for, but does not receive, Title I funds that (a) is among the lowest-achieving five percent of secondary

[1] The Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html*.

schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate (as defined in this notice) that is less than 60 percent over a number of years.

To identify the lowest-achieving schools, a State must take into account both (1) the academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading or language arts and in mathematics combined; and (2) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Principal evaluation system means a system that: (1) Is used for continual improvement of instructional leadership; (2) meaningfully differentiates performance using at least three performance levels; (3) uses multiple valid measures in determining performance levels, including, as a significant factor, data on student growth (as defined in this notice) for all students (including English learners and students with disabilities), as well as other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous leadership performance standards, teacher evaluation data, and student and parent surveys); (4) evaluates principals on a regular basis; (5) provides clear, timely, and useful feedback, including feedback that identifies and guides professional development needs; and (6) is used to inform personnel decisions.

Rural local educational agency means an LEA, at the time of the application, that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/programs/reapsrsa/eligible12/index.html.*

School leadership team means a team that leads the implementation of improvement and other initiatives at the school and is composed of the principal or other head of a school, teachers, and other educators (as defined in this notice), and, as applicable, other school employees, parents, students, and other community members. In cases where statute or local policy, including collective bargaining agreements, establishes a school leadership team, that body shall serve as the school leadership team for the purpose of this program.

Student growth means the change in student achievement for an individual student between two or more points in time, defined as—

(1) For grades and subjects in which assessments are required under ESEA section 1111(b)(3): (a) a student's score on such assessments; and (b) may include other measures of student learning, such as those described in (2) below, provided they are rigorous and comparable across schools within an LEA.

(2) For grades and subjects in which assessments are not required under ESEA section 1111(b)(3): Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; performance against student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Student-level data means demographic, performance, and other information that pertains to a single student.

Student performance data means information about the academic progress of a single student, such as formative and summative assessment data, information on completion of coursework, instructor observations, information about student engagement and time on task, and similar information.

Subgroup means each category of students identified under section 1111(b)(2)(C)(v)(II) of the ESEA, as well as any combined subgroup used in the State accountability system and approved by the Department in a State's request for ESEA flexibility.

Superintendent evaluation means a rigorous, transparent, and fair annual evaluation of an LEA superintendent that provides an assessment of performance and encourages professional growth. This evaluation must reflect: (1) the feedback of many stakeholders, including but not limited to educators, principals, and parents; and (2) student outcomes.

Teacher evaluation system means a system that: (1) Is used for continual improvement of instruction; (2) meaningfully differentiates performance using at least three performance levels; (3) uses multiple valid measures in determining performance levels, including, as a significant factor, data on student growth (as defined in this notice) for all students (including English learners and students with disabilities), as well as other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys); (4) evaluates teachers on a regular basis; (5) provides clear, timely, and useful feedback, including feedback that identifies and guides professional development needs; and (6) is used to inform personnel decisions.

Teacher of record means an individual (or individuals in a co-teaching assignment) who has been assigned the lead responsibility for a student's learning in a subject or course.

Proposed Selection Criteria

Changes from the FY 2012 competition:

(a) For selection criteria that include plans, peer reviewers are asked to assess the quality of the plans using a consistent set of high-quality plan elements. To clarify that these elements apply across all selection criteria that include plans, we propose deleting extra references to ''plans'' or ''strategies'' in the criteria language. These include:

(i) Selection criteria (C)(1) and (C)(2): In the last sentence of the stem to selection criteria (C)(1) and (C)(2), we propose changing ''The quality of the plan will be assessed based on'' to ''This includes''.

—New: ''This includes the extent to which the applicant proposes an approach that includes the following:''

—Original: ''The quality of the plan will be assessed based on the extent to which the applicant proposes an approach that includes the following:''

(ii) Selection criterion (C)(1)(b): In (C)(1)(b), we propose deleting ''there is a strategy to ensure that''. The proposed change helps clarify the use of the high-quality plan elements, as well as makes the stem for (C)(1)(b) consistent with the stem for (C)(1)(a).

—New: ''With the support of parents and educators, each student has access to—''

—Original: ''With the support of parents and educators, there is a strategy to ensure that each student has access to—''

(iii) Selection criteria (D)(1) and (D)(2): Similar to the clarification proposed for the stem to selection criteria (C)(1) and (C)(2), we propose changing ''The quality of the plan will be assessed based on'' to ''This includes''.

—New: ''This includes the extent to which—''

—Original: ''The quality of the plan will be determined based on the extent to which—''

(iv) Selection criteria (E)(1), (E)(2), and (E)(4): We propose changing ''strategy'' or ''plan'' to ''high-quality plan''.

(b) Selection criterion (E)(3): In selection criterion (E)(3), we propose changing ''must'' to ''should'', to clarify that the number of performance measures should be approximately 12 to 14, and may vary based on the applicant's plan and the number of applicable populations served.

—New: ''The applicant should have a total of approximately 12 to 14 performance measures.''

—Original: ''The applicant must have a total of approximately 12 to 14 performance measures.''

(c) We propose removing Selection Criterion G: Optional Budget Supplement. As noted elsewhere in this document, we propose removing the opportunity to apply for an optional budget supplement in order to maximize the number of grantees that could receive funding under this program and decrease the complexity of having separate plans and budgets for a single selection criterion that by definition is not intended to impact an applicant's ability to meet Priority 1.

Proposed Selection Criteria:

The Secretary proposes the following selection criteria for evaluating an application under this competition. We may apply one or more of these criteria or sub-criteria, any of the selection criteria in 34 CFR 75.210, criteria based on statutory requirements for the program in accordance with 34 CFR 75.209, or any combination of these in any year in which this program is in effect. In the notice inviting applications and the application package, the Department will announce the selection criteria to be applied and the maximum possible points assigned to each criterion.

A. Vision

(1) The extent to which the applicant has set forth a comprehensive and coherent reform vision that builds on its work in four core educational assurance areas (as defined in this notice) and articulates a clear and credible approach to the goals of accelerating student achievement, deepening student learning, and increasing equity through personalized student support grounded in common and individual tasks that are based on student academic interests.

(2) The extent to which the applicant's approach to implementing its reform proposal (e.g., schools, grade bands, or subject areas) will support high-quality LEA-level and school-level implementation of that proposal, including—

(a) A description of the process that the applicant used or will use to select schools to participate. The process must ensure that the participating schools (as defined in this notice) collectively meet the competition's eligibility requirements;

(b) A list of the schools that will participate in grant activities (as available); and

(c) The total number of participating students (as defined in this notice), participating students (as defined in this notice) from low-income families, participating students (as defined in this notice) who are high-need students (as defined in this notice), and participating educators (as defined in this notice). If participating schools (as defined in this notice) have yet to be selected, the applicant may provide approximate numbers.

(3) The extent to which the application includes a high-quality plan describing how the reform proposal will be scaled up and translated into meaningful reform to support district-wide change beyond the participating schools (as defined in this notice), and will help the applicant reach its outcome goals (e.g., the applicant's logic model or theory of change of how its plan will improve student learning outcomes for all students who would be served by the applicant).

(4) The extent to which the applicant's vision is likely to result in improved student learning and performance and increased equity as demonstrated by ambitious yet achievable annual goals that are equal to or exceed State ESEA targets for the LEA(s), overall and by student subgroup (as defined in this notice), for each participating LEA in the following areas:

(a) Performance on summative assessments (proficiency status and growth).

(b) Decreasing achievement gaps (as defined in this notice).

(c) Graduation rates (as defined in this notice).

(d) College enrollment (as defined in this notice) rates.

Optional: The extent to which the applicant's vision is likely to result in improved student learning and performance and increased equity as demonstrated by ambitious yet achievable annual goals for each participating LEA in the following area:

(e) Postsecondary degree attainment.

B. Prior Record of Success and Conditions for Reform

The extent to which each LEA has demonstrated evidence of—

(1) A clear record of success in the past four years in advancing student learning and achievement and increasing equity in learning and teaching, including a description, charts or graphs, raw student data, and other evidence that demonstrates the applicant's ability to—

(a) Improve student learning outcomes and close achievement gaps (as defined in this notice), including by raising student achievement, high school graduation rates (as defined in this notice), and college enrollment (as defined in this notice) rates;

(b) Achieve ambitious and significant reforms in its persistently lowest-achieving schools (as defined in this notice) or in its low-performing schools (as defined in this notice); and

(c) Make student performance data (as defined in this notice) available to students, educators (as defined in this notice), and parents in ways that inform and improve participation, instruction, and services.

(2) A high level of transparency in LEA processes, practices, and investments, including by making public, by school, actual school-level expenditures for regular K–12 instruction, instructional support, pupil support, and school administration. At a minimum, this information must include a description of the extent to which the applicant already makes available the following four categories of school-level expenditures from State and local funds:

(a) Actual personnel salaries at the school level for all school-level instructional and support staff, based on the U.S. Census Bureau's classification used in the F–33 survey of local government finances (information on the survey can be found at *http://nces.ed.gov/ccd/f33agency.asp*);

(b) Actual personnel salaries at the school level for instructional staff only;

(c) Actual personnel salaries at the school level for teachers only; and

(d) Actual non-personnel expenditures at the school level (if available).

(3) Successful conditions and sufficient autonomy under State legal, statutory, and regulatory requirements to implement the personalized learning environments described in the applicant's proposal;

(4) Meaningful stakeholder engagement in the development of the proposal and meaningful stakeholder support for the proposal, including—

(a) A description of how students, families, teachers, and principals in participating schools (as defined in this notice) were engaged in the development of the proposal and, as appropriate, how the proposal was revised based on their engagement and feedback, including—

(i) For LEAs with collective bargaining representation, evidence of direct engagement and support for the proposals from teachers in participating schools (as defined in this notice); or

(ii) For LEAs without collective bargaining representation, at a minimum, evidence that at least 70 percent of teachers from participating schools (as defined in this notice) support the proposal; and

(b) Letters of support from such key stakeholders as parents and parent organizations, student organizations, early learning programs, tribes, the business community, civil rights organizations, advocacy groups, local civic and community-based organizations, and institutions of higher education; and

(5) A high-quality plan for an analysis of the applicant's current status in implementing personalized learning environments and the logic behind the reform proposal contained within the applicant's proposal, including identified needs and gaps that the plan will address.

C. Preparing Students for College and Careers

The extent to which the applicant has a high-quality plan for improving learning and teaching by personalizing the learning environment in order to provide all students the support to graduate college- and career-ready. This plan must include an approach to implementing instructional strategies for all participating students (as defined in this notice) that enable participating students to pursue a rigorous course of study aligned to college- and career-ready standards (as defined in this notice) and college- and career-ready graduation requirements (as defined in this notice) and accelerate his or her learning through support of his or her needs. This includes the extent to which the applicant proposes an approach that includes the following:

(1) *Learning:* An approach to learning that engages and empowers all learners, in particular high-need students, in an age-appropriate manner such that:

(a) With the support of parents and educators, all students—

(i) Understand that what they are learning is key to their success in accomplishing their goals;

(ii) Identify and pursue learning and development goals linked to college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), understand how to structure their learning to achieve their goals, and measure progress toward those goals;

(iii) Are able to be involved in deep learning experiences in areas of academic interest;

(iv) Have access and exposure to diverse cultures, contexts, and perspectives that motivate and deepen individual student learning; and

(v) Master critical academic content and develop skills and traits such as goal-setting, teamwork, perseverance, critical thinking, communication, creativity, and problem-solving;

(b) With the support of parents and educators, each student has access to—

(i) A personalized sequence of instructional content and skill development designed to enable the student to achieve his or her individual learning goals and ensure he or she can graduate on time and college- and career-ready;

(ii) A variety of high-quality instructional approaches and environments;

(iii) High-quality content, including digital learning content (as defined in this notice) as appropriate, aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice);

(iv) Ongoing and regular feedback, including, at a minimum—

(A) Frequently updated individual student data that can be used to determine progress toward mastery of college- and career-ready standards (as defined in this notice), or college- and career-ready graduation requirements; and

(B) Personalized learning recommendations based on the student's current knowledge and skills, college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), and available content, instructional approaches, and supports; and

(v) Accommodations and high-quality strategies for high-need students (as defined in this notice) to help ensure that they are on track toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice); and

(c) Mechanisms are in place to provide training and support to students that will ensure that they understand how to use the tools and resources provided to them in order to track and manage their learning.

(2) *Teaching and Leading:* An approach to teaching and leading that helps educators (as defined in this notice) to improve instruction and increase their capacity to support student progress toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice) by enabling the full implementation of personalized learning and teaching for all students such that:

(a) All participating educators (as defined in this notice) engage in training, and in professional teams or communities, that supports their individual and collective capacity to—

(i) Support the effective implementation of personalized learning environments and strategies that meet each student's academic needs and help ensure all students can graduate on time and college- and career-ready;

(ii) Adapt content and instruction, providing opportunities for students to engage in common and individual tasks, in response to their academic needs, academic interests, and optimal learning approaches (e.g., discussion and collaborative work, project-based learning, videos, audio, manipulatives);

(iii) Frequently measure student progress toward meeting college- and career-ready standards (as defined in this notice), or college- and career-ready graduation requirements (as defined in this notice) and use data to inform both the acceleration of student progress and the improvement of the individual and collective practice of educators; and

(iv) Improve teachers' and principals' practice and effectiveness by using feedback provided by the LEA's teacher and principal evaluation systems (as defined in this notice), including frequent feedback on individual and collective effectiveness, as well as by providing recommendations, supports and interventions as needed for improvement.

(b) All participating educators (as defined in this notice) have access to, and know how to use, tools, data, and resources to accelerate student progress toward meeting college- and career-ready graduation requirements (as defined in this notice). Those resources must include—

(i) Actionable information that helps educators (as defined in this notice) identify optimal learning approaches that respond to individual student academic needs and interests;

(ii) High-quality learning resources (e.g., instructional content and assessments), including digital resources, as appropriate, that are aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), and the tools to create and share new resources; and

(iii) Processes and tools to match student needs (see Selection Criterion (C)(2)(b)(i)) with specific resources and approaches (see Selection Criterion (C)(2)(b)(ii)) to provide continuously improving feedback about the effectiveness of the resources in meeting student needs.

(c) All participating school leaders and school leadership teams (as defined in this notice) have training, policies, tools, data, and resources that enable them to structure an effective learning environment that meets individual student academic needs and accelerates student progress through common and individual tasks toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice). The training, policies, tools, data, and resources must include:

(i) Information, from such sources as the district's teacher evaluation system (as defined in this notice), that helps school leaders and school leadership teams (as defined in this notice) assess, and take steps to improve, individual and collective educator effectiveness and school culture and climate, for the purpose of continuous school improvement; and

(ii) Training, systems, and practices to continuously improve school progress toward the goals of increasing student performance and closing achievement gaps (as defined in this notice).

(d) The applicant has a high-quality plan for increasing the number of students who receive instruction from effective and highly effective teachers and principals (as defined in this notice), including in hard-to-staff schools, subjects (such as mathematics and science), and specialty areas (such as special education).

D. LEA Policy and Infrastructure

The extent to which the applicant has a high-quality plan to support project implementation through comprehensive policies and infrastructure that provide every student, educator (as defined in this notice), and level of the education system (classroom, school, and LEA) with the support and resources they need, when and where they are needed. This includes the extent to which—

(1) The applicant has practices, policies, and rules that facilitate personalized learning by—

(a) Organizing the LEA central office, or the consortium governance structure (as defined in this notice), to provide support and services to all participating schools (as defined in this notice);

(b) Providing school leadership teams in participating schools (as defined in this notice) with sufficient flexibility and autonomy over factors such as school schedules and calendars, school personnel decisions and staffing models, roles and responsibilities for educators and noneducators, and school-level budgets;

(c) Giving students the opportunity to progress and earn credit based on demonstrated mastery, not the amount of time spent on a topic;

(d) Giving students the opportunity to demonstrate mastery of standards at multiple times and in multiple comparable ways; and

(e) Providing learning resources and instructional practices that are adaptable and fully accessible to all students, including students with disabilities and English learners; and

(2) The LEA and school infrastructure supports personalized learning by—

(a) Ensuring that all participating students (as defined in this notice), parents, educators (as defined in this notice), and other stakeholders (as appropriate and relevant to student learning), regardless of income, have access to necessary content, tools, and other learning resources both in and out of school to support the implementation of the applicant's proposal;

(b) Ensuring that students, parents, educators, and other stakeholders (as appropriate and relevant to student learning) have appropriate levels of technical support, which may be provided through a range of strategies (e.g., peer support, online support, or local support);

(c) Using information technology systems that allow parents and students to export their information in an open data format (as defined in this notice) and to use the data in other electronic learning systems (e.g., electronic tutors, tools that make recommendations for additional learning supports, or software that securely stores personal records); and

(d) Ensuring that LEAs and schools use interoperable data systems (as defined in this notice) (e.g., systems that include human resources data, student information data, budget data, and instructional improvement system data).

E. Continuous Improvement

Because the applicant's high-quality plan represents the best thinking at a point in time, and may require adjustments and revisions during implementation, it is vital that the applicant have a clear and high-quality approach to continuously improve its plan. This will be determined by the extent to which the applicant has—

(1) A high-quality plan for implementing a rigorous continuous improvement process that provides timely and regular feedback on progress toward project goals and opportunities for ongoing corrections and improvements during and after the term of the grant. The plan must address how the applicant will monitor, measure, and publicly share information on the quality of its investments funded by Race to the Top—District, such as investments in professional development, technology, and staff;

(2) A high-quality plan for ongoing communication and engagement with internal and external stakeholders; and

(3) Ambitious yet achievable performance measures, overall and by subgroup, with annual targets for required and applicant-proposed performance measures. For each applicant-proposed measure, the applicant must describe—

(a) Its rationale for selecting that measure;

(b) How the measure will provide rigorous, timely, and formative leading information tailored to its proposed plan and theory of action regarding the applicant's implementation success or areas of concern; and

(c) How it will review and improve the measure over time if it is insufficient to gauge implementation progress.

The applicant should have a total of approximately 12 to 14 performance measures.

The chart below outlines the required and applicant-proposed performance measures based on an applicant's applicable population.

Applicable population	Performance measure
All	(a) The number and percentage of participating students, by subgroup (as defined in this notice), whose teacher of record (as defined in this notice) and principal are a highly effective teacher (as defined in this notice) and a highly effective principal (as defined in this notice); and

Applicable population	Performance measure
	(b) The number and percentage of participating students, by subgroup (as defined in this notice), whose teacher of record (as defined in this notice) and principal are an effective teacher (as defined in this notice) and an effective principal (as defined in this notice).
PreK–3	(a) Applicant must propose at least one age-appropriate measure of students' academic growth (e.g., language and literacy development or cognition and general learning, including early mathematics and early scientific development); and (b) Applicant must propose at least one age-appropriate non-cognitive indicator of growth (e.g., physical well-being and motor development, or social-emotional development).
4–8	(a) The number and percentage of participating students, by subgroup, who are on track to college- and career-readiness based on the applicant's on-track indicator (as defined in this notice); (b) Applicant must propose at least one grade-appropriate academic leading indicator of successful implementation of its plan; and (c) Applicant must propose at least one grade-appropriate health or social-emotional leading indicator of successful implementation of its plan.
9–12	(a) The number and percentage of participating students who complete and submit the Free Application for Federal Student Aid (FAFSA) form; (b) The number and percentage of participating students, by subgroup, who are on track to college- and career-readiness based on the applicant's on-track indicator (as defined in this notice); (c) Applicant must propose at least one measure of career-readiness in order to assess the number and percentage of participating students who are or are on track to being career-ready; (d) Applicant must propose at least one grade-appropriate academic leading indicator of successful implementation of its plan; and (e) Applicant must propose at least one grade-appropriate health or social-emotional leading indicator of successful implementation of its plan.

(4) A high-quality plan to evaluate the effectiveness of Race to the Top—District funded activities, such as professional development and activities that employ technology, and to more productively use time, staff, money, or other resources in order to improve results, through such strategies as improved use of technology, working with community partners, compensation reform, and modification of school schedules and structures (e.g., service delivery, school leadership teams (as defined in this notice), and decision-making structures).

F. Budget and Sustainability

The extent to which—

(1) The applicant's budget, including the budget narrative and tables—

(a) Identifies all funds that will support the project (e.g., Race to the Top—District grant; external foundation support; LEA, State, and other Federal funds);

(b) Is reasonable and sufficient to support the development and implementation of the applicant's proposal; and

(c) Clearly provides a thoughtful rationale for investments and priorities, including—

(i) A description of *all* of the funds (e.g., Race to the Top—District grant; external foundation support; LEA, State, and other Federal funds) that the applicant will use to support the implementation of the proposal, including total revenue from these sources; and

(ii) Identification of the funds that will be used for one-time investments versus those that will be used for ongoing operational costs that will be incurred during and after the grant period, as described in the proposed budget and budget narrative, with a focus on strategies that will ensure the long-term sustainability of the personalized learning environments; and

(2) The applicant has a high-quality plan for sustainability of the project's goals after the term of the grant. The plan should include support from State and local government leaders and financial support. Such a plan may include a budget for the three years after the term of the grant that includes budget assumptions, potential sources, and uses of funds.

Final Priorities, Requirements, Definitions, and Selection Criteria

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Order 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because we expect that more than that amount will be appropriated for Race to the Top and awarded as grants. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this proposed regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible LEAs. The Secretary also believes that the benefits of implementing the proposals contained in this notice would outweigh any associated costs. The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to support bold, locally directed improvements in learning and teaching that would directly improve student achievement and educator effectiveness. During the first year of the program, the Department received over 370 applications representing more than 1200 LEAs. We expect that the proposed priorities, requirements, definitions, and selection criteria in this notice would strengthen the applications for this program by clarifying the scope of activities the Secretary expects to support with program funds and the expected burden of work involved in preparing an application and implementing projects under the program. The pool of possible applicants is large and there is great interest in the program. Potential applicants need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement projects successfully, and their chances of submitting a successful application.

Program participation is voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds. Thus, the costs of implementation would not be a burden for eligible applicants, including small entities.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur educational reforms and improvements without additional Federal funding.

The U.S. Small Business Administration Size Standards defines as ''small entities'' for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. There are approximately 16,000 LEAs in the country that meet the definition of ''small entity.'' However, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that the proposals contained in this notice would have a significant economic impact on small entities. As discussed earlier, the number of applications received during the last competition was approximately 370.

In addition, the Secretary believes that the proposed priorities,

requirements, definitions, and selection criteria discussed in this notice do not impose any additional burden on small entities applying for a grant than they would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the regulatory action and the time needed to prepare an application would likely be the same.

Further, the proposed action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on small entities once they are able to meet the costs of compliance using the funds provided under this program.

The Secretary invites comments from small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from the Federal Government to LEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]

Category	Transfers
Annualized Monetized Transfers.	Approximately up to $150.
From Whom To Whom?.	From the Federal Government to LEAs.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. We estimate that each applicant would spend approximately 230 hours of staff time to address the proposed priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. The total number of hours for all applicants will vary based on the number of applications. Based on the number of applications the Department received in the FY 2012 competition, we expect to receive approximately 300 applications for these funds. The total number of hours for all expected applicants is an estimated 69,000 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. The total estimated cost for all applicants would be $2,070,000. We have submitted an Information Collection Request (ICR) for this collection to OMB. If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In preparing your comments you may want to review the ICR, which we maintain on the Regulations.gov Web site at *http://regulations.gov.* You may search for this ICR using docket ID ED–2013–OS–0050. This ICR is also available on OMB's RegInfo Web site at *www.reginfo.gov* under OMB Number 1894–0014. We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed priorities, requirements, and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection within 30 days after publication. This does not affect the deadline for your comments to us on the proposed priorities, requirements, definitions, and selection criteria.

Please note that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. We will provide the OMB control number when we publish the notice of final priorities, requirements, definitions, and selection criteria.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2013.

Arne Duncan,

Secretary of Education.

[FR Doc. 2013–08847 Filed 4–15–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2013–OPE–0008]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: In May 2012, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (title IV Federal Student Aid programs). We now announce additional topics for consideration for action by that committee. We also announce three public hearings at which interested parties may comment on the new topics suggested by the Department and may suggest additional topics for consideration for action by the negotiated rulemaking committee. For anyone unable to attend a public hearing, the Department will accept written comments.

DATES: The dates, times, and locations of the public hearings are listed under the **SUPPLEMENTARY INFORMATION** section of this notice. We must receive written comments suggesting issues that should be considered for action by the negotiated rulemaking committee on or before May 30, 2013.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID (listed at the beginning of this notice) at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''How to Use Regulations.gov'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about the public hearings, go to *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *wendy.macias@ed.gov.*

For information about negotiated rulemaking in general, see The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *wendy.macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *wendy.macias@ed.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 2012, we published a notice in the **Federal Register** (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV Federal Student Aid program funds, especially within the context of current technologies. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking mechanisms for disbursing title IV Federal Student Aid program funds, and to improve and streamline the campus-based Federal Student Aid programs. The notice also announced two public hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. The hearings were held on May 23, 2012, in Phoenix, Arizona, and on May 31, 2012, in Washington, DC. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the hearings can be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.* Written comments may be viewed through the Federal eRulemaking Portal at *www.regulations.gov*. Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket.

At this time, we are announcing additional topics for consideration for action by the negotiated rulemaking committee. These topics include regulations that have been the subject of litigation over the past two years. We are also announcing three additional public hearings at which interested parties may comment on the new topics suggested by the Department and may suggest additional topics for consideration for action by the negotiating committee. For anyone unable to attend a public hearing, the Department will accept written comments.

We intend to select participants for the negotiated rulemaking committee from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issues

Over the next several years, the Department intends to conduct rulemakings related to the title IV Federal Student Aid programs. In the near term, as indicated by the topics suggested in the May 1, 2012, **Federal**

Register notice and in this notice, we plan to address program integrity issues that place title IV Federal Student Aid program funds at risk. We expect to announce the formation of additional negotiated rulemaking committees to address more directly access to, and the affordability of, higher education and possible steps to improve the quality of higher education in the United States and to better encourage students to complete their education. This long-term agenda will take several years to complete.

The additional topics for consideration for action by the next negotiated rulemaking committee are: cash management of funds provided under the title IV Federal Student Financial Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock-to-credit hour conversion; gainful employment; changes made by the Violence Against Women Reauthorization Act of 2013 (VAWA Reauthorization), Public Law 113–4, to the campus safety and security reporting requirements in the HEA; and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program.

Cash Management

In response to the May 1, 2012, **Federal Register** notice, we heard testimony and received comments on disbursing title IV Federal Student Aid program funds by electronic funds transfer (EFT) and on whether students should have a greater role in deciding to accept debit cards or other banking services that are provided through an institutionally-controlled process or contracted provider. We are interested in further modifying and updating the Department's cash management regulations in subpart K of 34 CFR part 668. In particular, we are interested in reducing the time by which an institution must refund to a student any title IV Federal Student Aid program funds that are more than the amount the institution charges for tuition and fees and other educationally related costs, amending the regulations relating to requirements for student authorizations, specifying when and how an institution must disburse title IV Federal Student Aid program funds, and addressing how title IV Federal Student Aid program funds are provided to domestic and foreign schools and to students. In addition, we are considering developing regulations governing how an institution may use or invest title IV Federal Student Aid program funds held in its federal or operating accounts or, if the institution transfers the funds to a third-party servicer to make disbursements to students, how those funds are managed by the provider.

State Authorization for Programs Offered Through Distance Education or Correspondence Education

On October 29, 2010, we published final regulations (75 FR 66831) to clarify what is required for an institution of higher education, a proprietary institution of higher education, and a postsecondary vocational institution to be considered legally authorized by a State to offer an educational program in that State. The regulations in 34 CFR 600.9(c) specifically provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which the institution is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements for it to legally offer postsecondary distance or correspondence education in that State. Furthermore, under 34 CFR 600.9(c), an institution was required to document the State's approval upon the Secretary's request.

On July 12, 2011, in response to a legal challenge by the Career College Association, the U.S. District Court for the District of Columbia vacated the regulation under 34 CFR 600.9(c) on procedural grounds. *Career College Ass'n* v. *Duncan,* 796 F. Supp. 2d 108 (D.D.C. 2011). On August 14, 2012, on appeal, the U.S. Court of Appeals for the D.C. Circuit affirmed the decision of the district court and ruled that the regulation under 34 CFR 600.9(c) is not a logical outgrowth of the Department's proposed rules. It remanded the case to the district court with instructions to remand the regulation to the Department for reconsideration consistent with the D.C. Circuit's opinion. *Ass'n of Private Sector Colleges and Universities* v. *Duncan,* 681 F.3d 427 (D.C. Cir. 2012). In order to address the procedural concerns identified by the D.C. Circuit, the Department is now considering regulatory changes related to State authorization for programs offered through distance education or correspondence education.

State Authorization for Foreign Locations of Institutions Located in a State

State authorization requirements for institutions located in a State (as the term ''State'' is defined in 34 CFR 600.2) are established in 34 CFR 600.9. The regulations do not specifically address the State authorization requirements for foreign locations (i.e., locations that are not located in a State) of institutions located in a State. The Department is considering amending the State authorization regulations to establish authorization requirements for such foreign locations.

Clock to Credit Hour Conversion

We have heard concerns from schools and other parties about whether schools should track the underlying clock hours in a program after the program is converted to credit hours, as well as how the Department should consider State approval or licensing requirements in determining that a program is measured in clock hours for the purpose of awarding title IV Federal Student Aid program funds. The clock to credit hour conversion regulations are in 34 CFR 668.8(k) and (l). We are requesting public input on whether these issues should be addressed by the negotiated rulemaking committee.

Gainful Employment

On June 30, 2012, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia invalidated the repayment rate threshold in the gainful employment regulations, and set aside the requirement for institutions to report gainful employment program information to the Department. *Ass'n of Private Colleges and Universities* v. *Duncan* (D.D.C. 2012). That litigation is still ongoing; however, the Department is interested in public input in this area. The Department is interested in potential approaches to defining what it means for a program to prepare students for gainful employment in a recognized occupation. This includes thoughts on the best measures (such as debt-to-earnings ratios or repayment rates) and their thresholds for defining or evaluating gainful employment programs, how best to construct an accountability system that accurately distinguishes between successful and unsuccessful programs, and how to address the establishment of new programs, as well as related ideas. In considering these questions, the Department recommends taking into account the information included in the program-level data we gathered and released as Information Rates on June 26, 2012, available at *http://studentaid.ed.gov/about/data-center/school/ge.*

Campus Safety and Security Reporting

The VAWA Reauthorization, enacted March 7, 2013, amended section 485(f) of the HEA, known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act). These amendments address the high rates of dating violence and sexual assault on college campuses by requiring institutions to provide information to students about domestic violence, dating violence, sexual assault, and stalking, and to inform students and staff about the number of these crimes that occur on and near campus. Institutions are also required to create and disseminate policies describing the protections, resources, and services available to victims to help them safely continue their education. We intend to develop proposed regulations to implement these changes.

Definition of ''Adverse Credit'' for the Direct PLUS Loan Program

The PLUS Loan Program provides loans up to the amount of the cost of attendance to graduate students and parents. In light of the unique nature of the PLUS Loan Program, Congress limited eligibility to graduate or professional students or parents who do not have an adverse credit history, as determined pursuant to regulations promulgated by the Secretary. Under regulations published by the Department in 1994, a PLUS loan applicant is considered to have an ''adverse credit history'' if the applicant (1) is 90 or more days delinquent on the repayment of any debt or (2) has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title IV debt during the five years preceding the date of the credit report (34 CFR 685.200(c)(1)(vii)(B)). Since 1994, much has changed in consumer credit markets and credit reporting, and PLUS loans are no longer delivered through both the Federal Family Education Loan Program as well as the William D. Ford Direct Loan (Direct Loan) Program. Now, new PLUS Loans are only made through the Direct Loan Program. For these reasons, the Department is seeking public comment on whether and how it may be appropriate to modify the current regulatory definition of ''adverse credit.''

After a review of the public comments presented at the public hearings and in the written submissions, we will publish a notice in the **Federal Register** announcing the specific subject areas for which we intend to establish a negotiated rulemaking committee and requesting nominations for individual negotiators for the committee who represent the interests significantly affected by the proposed regulations. This notice will also be posted on the Department's Web site at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html*.

Public Hearings

We will hold three public hearings for interested parties to discuss the topics included in this notice and to suggest additional topics for the rulemaking agenda.

The public hearings will be held on:

- May 21, 2013, at the U.S. Department of Education, 1990 K Street, NW., Eighth Floor Conference Center, Washington, DC 20006.
- May 23, 2013, at the University of Minnesota, Twin Cities, Hubert H. Humphrey School of Public Affairs, Cowles Auditorium, 301 19th Avenue S, Minneapolis, MN 55455.
- May 30, 2013, at the University of California, San Francisco, UC Hall, Toland Hall Auditorium (Room U142), 533 Parnassus Avenue, San Francisco, CA 94143.

The public hearings will be held from 9:00 a.m. to 4:00 p.m., local time. Further information on the public hearing sites, including directions, is available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html*.

Individuals desiring to present comments at the public hearings must register by sending an email to *negreghearing@ed.gov*. The email should include the name of the presenter along with a general timeframe during which the individual would like to speak (for example, a presenter could indicate morning or afternoon, or before 11:00 a.m. or after 3:00 p.m.). We will attempt to accommodate each speaker's preference but, if we are unable to do so, we will make the determination on a first-come, first-served basis (based on the time and date the email was received). It is likely that each participant will be limited to five minutes. The Department will notify registrants of the location and time slot reserved for them. An individual may make only one presentation at the public hearings. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept walk-in registrations for any remaining time slots on a first-come, first-served basis beginning at 8:30 a.m. on the day of the public hearing at the Department's on-site registration table.

Speakers may also submit written comments. In addition, for anyone who does not present at a public hearing, the Department will accept written comments through May 30, 2013. (See the **ADDRESSES** sections of this notice for submission information.)

Schedule for Negotiations

We anticipate that any committee established after the public hearings will begin negotiations in September 2013, with the committee meeting for up to three sessions of approximately four days each at roughly monthly intervals. The committee will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent document in the **Federal Register**, and will be posted on the Department's Web site at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html*.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: April 11, 2013.

Martha Kanter,

Under Secretary for Education.

[FR Doc. 2013–08891 Filed 4–15–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–YELL–12061] [PPWONRADE2, PMP00EI05.YP0000]

36 CFR Part 7

RIN 1024–AE15

Special Regulations; Areas of the National Park System; Yellowstone National Park; Winter Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing this rule to establish a management framework that allows the public to experience the unique winter resources and values at Yellowstone National Park. This rule includes provisions that allow greater flexibility for commercial tour operators, provide mechanisms to make the park cleaner and quieter than what has been authorized during the previous four winter seasons, reward oversnow vehicle innovations and technologies, and allow increases in visitation. It also would require snowmobiles and snowcoaches operating in the park to meet air and sound emission requirements and be accompanied by a guide.

DATES: Comments must be received by June 17, 2013.

Comments on the information collection requirements must be received by May 16, 2013.

ADDRESSES: If you wish to comment on this rule, you may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE15, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190.
- *Hand Deliver to:* Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the electronic docket to read comments received, go to *http://www.regulations.gov.*

Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–AE15 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Wade Vagias, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307–344–2035, or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule would establish a new and more flexible method for managing oversnow vehicle (OSV) access to the park.

Under 36 CFR 2.18(c) the use of snowmobiles is prohibited in parks unless a special regulation allowing such use is promulgated. Therefore, in order to allow OSV use for the upcoming and future winter seasons, a special regulation must be in place. This proposed rule, when finalized, will authorize snowmobile and snowcoach use under § 2.18.

Beginning with the 2014–2015 winter season, the rule would replace the former concept of a fixed maximum number of vehicles allowed in the park each day with a new, more flexible concept of transportation events. Within an allowable number of daily transportation events, commercial tour operators would have the opportunity to combine snowcoach and snowmobile trips in a way that protects park resources and provides flexibility to respond to fluctuations in visitation demand. By relying upon user demand to determine the best mix of OSV use and focusing on the impacts of OSV use upon park resources, the transportation event concept strikes a common-sense balance between allowing adequate access and protecting park resources. This rule would also require snowmobiles and snowcoaches to meet new sound and air emissions standards, established by the National Park Service (NPS) under the authority granted by the NPS Organic Act (16 U.S.C. 1), which authorizes the Secretary of the Interior to ''promote and regulate'' the use of national parks.

The new approach would allow commercial tour operators to exchange transportation event allocations within the same entrance, adjust the proportion of snowcoaches or snowmobiles in the park each day, increase the size of snowmobile groups to meet demand on peak days, and increase the vehicle group size per transportation event if voluntary enhanced emission standards are met.

Some specific changes in the proposed rule include:

- A transportation event would initially equal one group of snowmobiles (maximum group size of 10, average of 7 over the winter season) or one snowcoach. The group size of transportation events may increase from a seasonal average of 7 to 8 for snowmobiles and from a maximum of 1 to 2 for snowcoaches, not to exceed a seasonal average of 1.5 snowcoaches, if commercial tour operators use vehicles that meet voluntary enhanced emission standards. This encourages the adoption of improved OSV innovations and technologies.
- Up to 110 total transportation events would be authorized each day. Commercial tour operators would decide whether to use their daily allocation for snowmobiles or snowcoaches, but no more than 50 transportation events each day could come from snowmobiles.
- OSV use would continue to be 100% guided. For snowmobiles, up to 46 transportation events would be commercially guided. Four non-commercially guided snowmobile transportation events of up to 5 snowmobiles per group would also be permitted daily, one from each park entrance.
- Sound and air emission requirements for snowmobiles would continue unchanged until the 2017–2018 winter season, when the maximum allowable sound and carbon monoxide (CO) emissions would be lowered.
- Sound and air emission requirements would also begin in the 2017–2018 winter season for existing snowcoaches, and would apply to all new snowcoaches brought into service starting in the 2014–2015 winter season.

Background

The National Park Service (NPS) has been managing winter use in Yellowstone National Park for several decades. A detailed history of the winter use issue, past planning efforts, and litigation is provided in the background section of the 2013 Final Winter Use Plan/Supplemental Environmental

Impact Statement (final SEIS), available online at *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013 Supplemental Winter Use Plan EIS,'' and then clicking on the link entitled ''Document List.'' Additional information about the history of winter use at Yellowstone National Park is available online at *http://www.nps.gov/yell/planyourvisit/winteruse.htm.*

The park has most recently operated under an interim winter use rule that was originally in effect for the 2009–2010 and 2010–2011 winter seasons. The interim rule allowed up to 318 commercially guided snowmobiles and 78 commercially guided snowcoaches in the park per day. In November 2011, the NPS released a Winter Use Plan/Final Environmental Impact Statement (FEIS) with a preferred alternative. Under this alternative, the park would operate under the interim rule for one additional season. In December 2011, a Record of Decision (ROD) and final rule (76 FR 77131) were issued, implementing this one-year portion of the preferred alternative and extending the interim rule for the 2011–2012 winter season. This rule expired by its own terms on March 15, 2012.

On June 29, 2012, the NPS released a Draft Winter Use Plan/Supplemental Environmental Impact Statement (draft SEIS) and published a Notice of Availability in the **Federal Register** (77 FR 38824). Public comment on the draft SEIS closed on August 20, 2012. The response from the public and stakeholders was robust. A majority of the substantive comments addressed the proposal in the draft SEIS's preferred alternative to manage snowmobiles and snowcoaches by transportation events. Numerous commenters requested additional time to consider this new management concept and to respond substantively to it. Accordingly, the NPS decided to reopen public comment on the draft SEIS for an additional 30 days. Mindful of the short amount of time left before the opening of the 2012–2013 winter season on December 15, 2012, and desiring to take the time necessary to make a reasoned long-term decision on winter use, the NPS decided to amend the December 2011 ROD and extend the interim rule for an additional year. On December 12, 2012, the NPS published a Notice of Availability of Amended Record of Decision for the FEIS (77 FR 74027) and a final rule (77 FR 73919) extending the 2011–2012 daily entry limits and operating requirements for one additional winter season.

With publication of this proposed rule, the NPS is soliciting public comment on a long-term rule for winter use in Yellowstone National Park. Implementing a long-term winter use rule will create a stable regulatory environment for snowmobile and snowcoach commercial tour operators, many of which are small businesses in the communities surrounding the park. A long-term rule will allow these businesses to make prudent decisions and capital investments, such as investing in new vehicles for their fleets, offering employment to area residents, preparing advertising and marketing materials, and purchasing equipment and accessories such as snowcoaches, snowmobiles, snowmobile suits, helmets, and boots. A long-term rule will also provide certainty to visitors, allowing them to make advance plans to visit the park, and would ensure that park resources are protected.

Final SEIS and the Preferred Alternative

The final SEIS analyzed the issues and environmental impacts of four alternatives for the management of winter use in the park. Major issues analyzed in the final SEIS include social and economic issues, human health and safety, wildlife, air quality, natural soundscapes, visitor use and experience, and park operations. Impacts associated with each of the alternatives are detailed in the final SEIS, which is available online at *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013 Supplemental Winter Use Plan EIS'' and then clicking on the link entitled ''Document List.''

Alternative 1, the no-action alternative, would prohibit public OSV use in Yellowstone but would allow for approved non-motorized use to continue. Alternative 1 has been identified as the environmentally preferable alternative. Alternative 2 would manage OSV use at the same levels as the interim rule (318 commercially guided snowmobiles and 78 snowcoaches per day). Alternative 3 would initially allow for the same level of use as Alternative 2 (318 snowmobiles and 78 snowcoaches per day) but would transition to allowing only snowcoaches over a 3-year period beginning in the 2017–2018 winter season. Upon completing the transition, there would be zero snowmobiles and up to 120 snowcoaches per day in the park. The final SEIS also describes several other alternatives that were considered but eliminated from further study.

The final SEIS identified Alternative 4 as the preferred alternative, which this rule proposes to implement. This alternative provides for motorized winter use while protecting park resources. Traveling through the park on snowmobiles and snowcoaches allows visitors to experience and access the park's unique and stunning winter landscape and access areas that cannot be reached using non-motorized means of transportation. The NPS believes that, through proper management, motorized winter use is an appropriate activity in the park.

The preferred alternative:

- Manages OSV use by transportation events, prescribes air and sound emission requirements, and continues the 100% guiding requirement to help ensure that the purpose and need for the final SEIS are met. This will allow for increases in visitation while making the park cleaner and quieter than what has been allowed under the interim rule.
- Requires snowmobiles and snowcoaches to meet new air and sound emission requirements and encourages commercial tour operators to meet voluntary enhanced emission standards by adopting improved vehicle innovations and technologies.
- Contains market-based elements that give commercial tour operators greater flexibility to respond to fluctuations in visitation demand across the 91-day winter season. The rule allows commercial tour operators to exchange transportation event allocations within the same entrance, adjust the proportion of snowcoaches or snowmobiles in the park each day (a transportation event could be used for either snowmobiles or snowcoaches, but no more than 50 transportation events each day could come from snowmobiles), increase the size of snowmobile groups on peak days, and increase the size of transportation events if voluntary enhanced emission standards are met.
- Demonstrates the NPS commitment to monitor winter use and to use the results to adjust the winter use OSV management program. The results of past monitoring, including data regarding air quality, wildlife, soundscapes, and health and safety, were used in formulating the alternatives in the final SEIS.
- Applies the lessons of the last several winters, which demonstrate, among other things, that requiring all snowmobile and snowcoach trips to be guided reduces accidents and law enforcement incidents, and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the park.

Summary of the Proposed Rule

Snowmobile and snowcoach use at Yellowstone National Park is referred to as oversnow vehicle or OSV use. The proposed rule is similar in many respects to plans and rules that have been in effect for the last eight winter seasons. Thus, many of the regulations regarding operating conditions, designated routes, and restricted hours of operation are similar to regulations enforced by the NPS for nearly a decade. One notable difference is a new proposal in this rule to manage OSV use by transportation events instead of placing strict limits on the number of OSVs allowed in the park on any day.

Managing OSV use by transportation events gives snowcoach and snowmobile commercial tour operators greater flexibility, allows for higher numbers of visitors, and is designed to make the park cleaner and quieter than what has been authorized during the previous four winter seasons. Under the proposed rule, up to 110 transportation events would be allowed in the park on any day during the winter season. A transportation event would consist of one snowcoach or a group of snowmobiles (seasonal average of 7 snowmobiles per group; individual groups could not exceed a maximum of 10 snowmobiles) travelling together within the park. Commercial tour operators would be able to decide whether to use their allocation of transportation events for snowmobiles or snowcoaches, but no more than 50 transportation events may come from snowmobiles on any day. Incentives based upon voluntary enhanced emission standards would allow the size of a transportation event to increase from 1 to 2 snowcoaches per event, not to exceed a seasonal average of 1.5 snowcoaches per event, and from a seasonal average of 7 to 8 snowmobiles per event.

The NPS is also proposing changes to air and sound emission requirements for OSVs as part of the proposed rule, in order to reduce impacts on park resources and help ensure the impacts from snowmobile and snowcoach transportation events are comparable. Managing OSV use by transportation events represents a shift from an approach focused on the number of vehicles allowed in the park to an approach focused on the impacts of those vehicles upon park resources. The NPS believes this would:

- Result in a cleaner and quieter park than what has been allowed under the previous four winter seasons, enhance visitor experience, and permit growth in the number of visitors able to experience the park;
- Allow for greater flexibility for commercial tour operators;
- Reward OSV innovations, adoption of new technologies, and commitment to lowering impacts from OSVs;
- Create more extended periods of limited or no OSV-related impacts; and
- Potentially result in an increase in vehicles and visitors without increasing impacts on the park.

Another notable difference in the proposed rule concerns guiding requirements for snowmobiles. Although the proposed rule maintains the existing requirement that all snowmobile trips be guided, it reserves four snowmobile transportation events each day for groups of non-commercially guided snowmobiles. All snowmobile operators taking part in a non-commercially guided trip would be required to comply with requirements under a Non-commercially Guided Snowmobile Access Program to be developed by the park before the start of the 2014–2015 winter season.

Phased Transition to New Management Paradigm

The new management paradigm under the proposed rule would be phased in over five winter seasons to provide the park and commercial tour operators sufficient time to adjust to the new emission requirements and the management of OSVs by transportation events. The NPS specifically seeks comment on this phased transition to the new management paradigm and whether the proposed implantation schedule for the new emission requirements provides snowmobile manufacturers and commercial tour operators sufficient time to respond, or if the implementation schedule could be accelerated as described following the air and sound emission requirements that are discussed later in this rule.

Phase One (2013–2014 Season)

A one-season transition period to prepare for the implementation of the new winter use plan would be in place for the 2013–2014 winter season to allow commercial tour operators sufficient time to prepare for the proposed shift to management by transportation events. During this transition period, provisions of the 2012–2013 interim plan would be extended, allowing up to 318 snowmobiles and 78 snowcoaches per day for the first year of the new plan only.

Phase Two (2014–2015 Through 2016–2017 Seasons)

Starting in the 2014–2015 winter season, the park would begin managing OSV use by transportation events instead of daily limits. Sound and air emission requirements would apply to all new snowcoaches brought into service starting in the 2014–2015 winter season.

In response to public comments on the draft SEIS that the NPS should not increase the number of snowmobiles allowed in the park before the new air and sound emission standards are required, the average size of commercially guided snowmobile transportation events for Phase Two (the next three winter seasons, 2014–2015 through the 2016–2017 winter season) may not exceed 7 snowmobiles, averaged daily (i.e., a maximum of 322 commercially guided snowmobiles in the park per day, and an additional 4 non-commercially guided transportation events per day not to exceed 5 snowmobiles each, a maximum of 342 snowmobiles in total). This limit would apply to any snowmobile transportation event that includes a snowmobile that does not meet the new air or sound emission requirements that would apply to all snowmobiles beginning in the 2017–2018 season. Commercial tour operators would be allowed to have up to 10 snowmobiles per single event, provided the average daily event size was 7 or less. For example, a commercial tour operator that is allocated 3 snowmobile transportation events per day could meet the daily average requirement through a combination of 3 snowmobile transportation events of 7 snowmobiles each, or 2 snowmobile transportation events of 8 snowmobiles each and 1 transportation event of 5 snowmobiles.

However, if commercial tour operators voluntarily upgrade their fleets to meet the new air and sound emission standards during the 2014–2015, 2015–2016, or 2016–2017 winter seasons (before these limits become mandatory in the 2017–2018 season), their group sizes will be more flexible. The average group size for commercially guided snowmobile transportation events consisting entirely of snowmobiles meeting the new air and sound emission requirements would be averaged seasonally (instead of daily), which allows greater flexibility in daily group sizes. A group still could not exceed the maximum group size of 10 snowmobiles. For example, a commercial tour operator that is allocated 3 snowmobile transportation events per day may have 3 groups of up

to 10 snowmobiles each in a single day, provided there are smaller groups on other days during the winter season that bring the seasonal average group size to 7 or less. This would encourage voluntary early adoption of improved vehicle technologies that meet the new air and sound emission requirements, and would help ensure that impacts to park resources during the 2014–2015 through 2016–2017 winter seasons are minimized.

Phase Three (2017–2018 Season and Beyond)

Starting with the 2017–2018 winter season, the proposed rule would implement all elements of the new management paradigm, including a requirement that all OSVs, including vehicles that had been operating in the park during prior seasons, meet the new air and sound emission requirements.

Voluntary Enhanced BAT Upgrade

In addition to the above opportunities and requirements, the proposed rule offers operators an opportunity to voluntarily upgrade their fleets further and receive an additional OSV per transportation event. As of December 15, 2014, commercial tour operators may voluntarily upgrade their fleets to meet enhanced air and sound emission standards that are more stringent than the new 2017–2018 season air and sound emission requirements described above. If these voluntary enhanced standards are met, the size of a transportation event for that commercial tour operator may increase from a seasonal average of 7 to 8 snowmobiles per event and from 1 to 2 snowcoaches per event, not to exceed a seasonal average of 1.5 snowcoaches per event.

Monitoring Will Continue

As part of the park's adaptive management program for winter use, monitoring of winter visitor use and park resources would continue under this proposal. The park may take adaptive management actions, including the closure of selected areas of the park or sections of roads, if monitoring indicates that human presence or activities have a substantial effect that cannot be mitigated on wildlife or other park resources. A list of adaptive management actions that may be taken by the park is provided in Appendix D to the final SEIS. The NPS would provide public notice before any closure would be implemented under one or more of the methods listed in 36 CFR 1.7(a). The Superintendent would continue to have the authority under either this rule or 36 CFR 1.5 to take emergency actions to protect park resources or values.

Air Emission Requirements

Snowmobiles

The proposed rule retains the requirement from previous winter use plans that all recreational snowmobiles comply with air emission standards. While the past 7 years of monitoring has shown that air quality has improved following implementation of air emissions standards for snowmobiles, the NPS believes that implementation of new air emission standards for snowmobiles and snowcoaches would improve air quality in the world's first national park (a designated Class I area under the Clean Air Act) even further, and will help ensure the impact of a snowmobile transportation event and a snowcoach transportation event to air quality are comparable. The NPS believes that snowmobile and snowcoach commercial tour operators can meet the air emission requirements in the proposed rule through the typical turnover of their fleets and that the technology to meet the new air emission standards for both types of OSVs is currently available in the commercial marketplace. One snowmobile manufacturer currently produces 23 different snowmobile models (across three model years, 2011–2013) that meet the new air emission standards. However, the NPS specifically seeks comment on the likelihood of other manufacturers producing OSVs that meet the new air emission requirements by the proposed deadline, and any significant additional costs for commercial tour operators to update their fleets with compliant vehicles. The NPS also seeks comments from industry and other knowledgeable parties regarding the implementation schedule for the new emission requirements and if the schedule could be accelerated.

Air and sound emission requirements for snowmobiles and snowcoaches in Yellowstone National Park are park entrance requirements. The restrictions on air and sound emissions in this rule are not restrictions on what manufacturers may produce, but instead are end-use restrictions on which commercially produced snowmobiles and snowcoaches may be used in the park. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to ''promote and regulate'' the use of national parks ''by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Further, the Secretary is expressly authorized by 16 U.S.C. 3 to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks.'' These requirements are not to be confused with Environmental Protection Agency (EPA) emission standards for these vehicles. The exercise of the NPS Organic Act authority is not an effort by the NPS to regulate manufacturers and is consistent with Section 310 of the Clean Air Act (42 U.S.C. 7610).

During the late 1990s, when an average of 795 snowmobiles entered the park each day, elevated levels of carbon monoxide (CO), particulate matter (PM), and hydrocarbons (HC) were detected. To mitigate these emissions, the NPS implemented snowmobile air emission requirements beginning in 2004 that called for emission levels no greater than 120 grams per kilowatt hour (g/kW-hr) of CO and 15 g/kW-hr for HC. There are no emission requirements for PM because monitoring over the past several winter seasons has indicated that PM levels are extremely low and therefore are not an issue of concern at this time. The NPS proposes to maintain the existing air emission requirements through the 2016–2017 season, and then lower the emission standard for CO to 90 g/kW-hr beginning with the 2017–2018 season. However, the NPS specifically seeks comment on the likelihood of snowmobile manufacturers producing vehicles that meet the new air emission requirements by the proposed deadlines, and any significant additional costs for commercial tour operators to update their fleets with compliant vehicles. The NPS also seeks comments from industry and other knowledgeable parties regarding the implementation schedule for the new emission requirements and if the schedule could be accelerated.

The requirements in place since December 2004 have significantly reduced CO, PM, and HC emissions. As compared to EPA baseline emissions assumptions for conventional two-stroke snowmobiles, the NPS air emission requirements have achieved a 70% reduction in CO and a 90% reduction in HC. Daily use limits and guiding (which helps assure use of NPS-certified snowmobiles and keeps idling to a minimum) have also improved air quality in the park.

All new snowmobiles manufactured for sale in the United States must be certified to EPA's emission standards. The NPS encourages each snowmobile

manufacturer to demonstrate that its snowmobile(s) will meet the NPS air emission requirements by submitting to the NPS a copy of their EPA applications (which include the engine's Family Emissions Limits, i.e., the emission levels a given snowmobile is certified as meeting) used to demonstrate compliance with EPA's snowmobile emission regulation at the same time they submit the application to EPA. The NPS would accept the application and information from a manufacturer, while review and certification by EPA is pending, in support of the NPS conditionally certifying a snowmobile as meeting the NPS's emission requirements. Should EPA certify the snowmobile at emissions levels that would no longer meet the NPS requirements, this snowmobile would no longer be considered NPS-compliant and its use in the park would be prohibited or phased out according to a schedule determined by the NPS. If the NPS does not receive a request for conditional certification, the NPS will rely on the emission levels determined and certified by EPA to determine if a NPS/Yellowstone certification is warranted.

A snowmobile that has been modified from the manufactured design may increase emissions of HC and CO to greater than the proposed emission restrictions and therefore would not be allowed to enter the park. It would be the responsibility of the commercial tour operator and guide to ensure that a snowmobile complies with all applicable restrictions. A snowmobile may be subject to periodic and unannounced inspections to measure tailpipe air emissions. To the extent possible, the NPS will conduct snowmobile inspections when it is mutually convenient for the commercial tour operator and the NPS.

Snowmobiles operating on the Cave Falls Road, which extends approximately 1 mile into the park from the adjacent Caribou-Targhee National Forest, would continue to be exempt from the air-emission requirements. The Cave Falls Road does not connect to other park roads and snowmobile use on this road is independent of the other oversnow routes in the park.

Snowcoaches

Under concessions contracts issued in 2003, 78 snowcoaches are currently authorized to operate in the park. Approximately 21 of these snowcoaches, known in the park as ''historic snowcoaches,'' were manufactured by Bombardier before 1983 and designed specifically for oversnow travel. These historic snowcoaches, and several late-model snowcoaches also designed specifically for oversnow travel, are considered purpose-built snowcoaches. All other snowcoaches are passenger vans, sport utility vehicles, or light- or medium-duty buses that have been converted for oversnow travel using tracks or skis. The conditions and requirements applicable to snowcoaches under the proposed rule apply to both purpose-built snowcoaches and snowcoaches converted from other types of vehicles.

In 2004, EPA began phasing in new and cleaner emissions standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles, and in 2008 for heavy duty spark and compression ignition vehicles (the vehicle classes most converted snowcoaches meet). These standards are called Tier 2 (for lighter-duty vehicles) or ''engine configuration certified'' (for heavier duty, diesel vehicles). Implementation of these standards was completed in 2010 (65 FR 6698, February 10, 2000).

The proposed rule would require that diesel-fueled snowcoaches with a gross vehicle weight rating (GVWR) less than 8,500 pounds meet the functional equivalent of 2010 (or newer) EPA Tier 2 Model Year engine and emission control technology requirements. This includes items such as engine control module (ECM) computers, onboard diagnostics system (OBD), sensors, and exhaust after-treatment equipment that is standard original equipment manufacturer (OEM) equipment included with on-road vehicles or engines. Diesel-powered snowcoaches must also be equipped with applicable ceramic particulate filters and afterburners.

A diesel-fueled snowcoach with a GVWR of 8,500 pounds or more would need to comply with EPA model year 2010 ''engine configuration certified'' diesel air emission standards. However, if the diesel snowcoach has a GVWR between 8,500 and 10,000 pounds, there may be a configuration that meets the functional equivalent of 2010 (or newer) EPA Tier 2 Model Year technology standards for an on-road vehicle that would achieve the best results from an emissions perspective. This particular type of configuration would require review and approval by the NPS.

The proposed rule would require that all gasoline-fueled snowcoaches greater than 10,000 GVWR meet the functional equivalent of 2008 (or newer) EPA Tier 2 Model Year engine emission control technology requirements. This includes items such as ECM computers, OBD, sensors, and exhaust after-treatment equipment that is standard OEM equipment included with on-road vehicles or engines. The proposed rule would require that all gasoline-fueled snowcoaches less than 10,000 GVWR meet the functional equivalent of 2007 (or newer) EPA Tier 2 Model Year engine emission control technology requirements.

The NPS recognizes that some existing snowcoaches will likely need to be replaced or retrofitted with new engines and emissions equipment to comply with these air emission requirements. The NPS believes that this can be accomplished through the typical turnover of snowcoach fleets. As a result, these requirements would apply to existing snowcoaches beginning in the 2017–2018 winter season, and to new snowcoaches put into service beginning in the 2014–2015 winter season. The NPS specifically seeks comment on whether the proposed implantation schedule to the new air emission requirements for snowcoaches provides commercial tour operators sufficient time to meet the new requirements or if the implementation schedule could be accelerated. The NPS notes that the technology to meet the new air emission standards for snowcoaches is currently available in the commercial marketplace and is based upon the Environmental Protection Agency's Tier II emission standard, and at least 18 of the 78 snowcoaches in the commercial fleet already meet the new air emission requirement.

To ensure compliance with EPA air emission standards, all emission-related exhaust components must be installed and functioning properly. Malfunctioning emissions-related components must be replaced with the OEM components where possible. If new or functional used OEM parts are not available, aftermarket parts may be used. Catalysts that have exceeded their useful life must be replaced unless the commercial tour operator can demonstrate that the catalyst is functioning properly. Operating a snowcoach that has its original pollution control equipment modified or disabled would be prohibited.

A snowcoach may be subject to periodic and unannounced inspections to determine compliance with emission requirements. To the extent possible, the NPS will conduct snowcoach inspections when it is mutually convenient for the commercial tour operator and the NPS. This could include off-hours, on days the snowcoach is not being used to support concessions operations, or during the snowcoach 'testing days' held annually in the park prior to the first day of the

winter season. The NPS specifically seeks comment on these ideas and other means and mechanisms for carrying out periodic snowcoach inspections that will minimize potential burdens on commercial tour operators.

The University of Denver (in 2005 and 2006) and North Carolina State University (in 2012) collected emissions data from various snowcoaches. Results indicated that snowcoaches could be modernized to reduce CO and HC emissions. These studies found that in general, newer snowcoaches are cleaner than older models and have emission controls that reduce tailpipe pollutants. By implementing air emission requirements for snowcoaches that call for newer engine and emission controls, the NPS expects continued improvements in the park's air quality.

Sound Emission Requirements

Snowmobiles

Through March 15, 2017, sound restrictions would continue to require a snowmobile to operate at or below 73 decibels while at full throttle, as measured using the A scale (dB(A)) according to the 1985 version of the Society of Automotive Engineers (SAE) J192 test procedures. Beginning with the 2017–2018 winter season, the maximum decibel level allowed for snowmobiles would be reduced to 67 dB(A) according to the applicable (as of November 1, 2013) version of SAE J1161 test procedures. The SAE J1161 test procedures allow for a tolerance of 2 dB(A) over the sound level limit to provide for variations in test sites, temperature gradients, wind velocity gradients, test equipment, and inherent differences in nominally identical vehicles. To operate in the park after March 15, 2015, a population of measurements for a snowmobile model may not exceed a mean output of 67 dB(A), and a single measurement may not exceed 69 dB(A), using the J1161 test procedures.

Because the current NPS sound emission requirements were established using a slightly modified version of the 1985 J192 test procedures (as a result of information provided by industry and modeling), the park would initially continue to use the 1985 test procedures to be consistent with these existing requirements. This rule proposes to transition to the SAE J1161 test procedures for all snowmobiles seeking to demonstrate compliance with the new sound emission requirement of 67 dB(A). As a result, in the 2017–2018 winter season, the mean dB(A) output of a snowmobile must not exceed 67 dB(A) using the J1161 test procedures to demonstrate voluntary early compliance with the new sound emission requirements, but a snowmobile may still operate in the park if its mean dB(A) output does not exceed 73 dB(A) using the J192 test procedures.

The SAE J1161 test procedures would be modified from the current 15 mph steady throttle (cruising speed) to the typical cruising speed of snowmobiles in Yellowstone (approximately 35 mph), consistent with OSV noise emissions tests conducted by the John A. Volpe National Transportation Systems Center, U.S. Department of Transportation, in 2008 and 2009.

To provide certainty to the commercial tour operators and the park, the NPS would identify the version of the SAE J1161 test procedures in place on November 1, 2013, as the version that would apply beginning in the 2017–2018 season. This would give the NPS and industry sufficient time to test snowmobiles that are in development and production well ahead of the 2017–2018 winter season. This rule proposes that the Superintendent may periodically update testing procedures based upon new information or updates to SAE J1161 standards and procedures. To provide certainty to commercial tour operators, the Superintendent would not require certification under an updated version of J1161 test procedures that is adopted by SAE less than 2 years prior to the start of any winter season.

In past rules, the NPS has allowed an exception to the barometric pressure requirements of the SAE J192 procedures to determine if a snowmobile meets sound emission requirements. With the adoption of SAE J1161 test procedures for snowmobiles meeting the new sound emission requirements, the NPS believes it would be an appropriate time to bring all aspects of testing into conformance with the SAE J1161 procedures.

Accordingly, for the first four winters of implementation of this rule (2013–2014 through 2016–2017), snowmobiles that do not meet the new sound emission requirements may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This continues the exception to the 1985 SAE J192 test procedures, which require barometric pressure between 27.5 and 30.5 inches Hg. This exception maintains consistency with the testing conditions previously used to determine compliance with the sound emissions requirement. The reduced barometric pressure allowance was necessary since snowmobiles were tested at the high elevation of the park, where atmospheric pressure is lower than the SAE J192's requirements. Testing data indicate that snowmobiles test quieter at higher elevations, and therefore may be able to pass this test at higher elevations but fail when tests are conducted near sea level. In order to demonstrate compliance with the new sound emission standard of 67dB(A), which is voluntary prior to December 15, 2017, but mandatory thereafter, snowmobiles must comply with the requirements of the applicable (as of November 1, 2013) SAE J1161 test procedures with no barometric pressure (high altitude) exception. The SAE J1161 test procedures require barometric pressure between 27.5 and 30.5 inches Hg.

For sound emissions, snowmobile manufacturers may submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobile models are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. In order to certify a snowmobile model for use in Yellowstone National Park, the SSCC form must certify that a population of measurements for that model does not exceed the maximum mean dB(A) values required by the proposed rule. The proposed rule would not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS intends to work cooperatively with the snowmobile manufacturers on appropriate documentation. Other certification methods could be approved by the NPS on a case-by-case basis.

The NPS is specifically seeking comment on the merits of changing how snowmobiles are noise emission tested from the SAE J192 test procedures to the modified SAE J1161 test procedures, and setting the maximum allowable decibel level for snowmobiles to 67 dB(A) under the SAE J1161 test procedures beginning in the 2017–2018 winter season. The SAE J1161 test procedures measure the sound output of snowmobiles at cruising speed. In contrast, the SAE J192 test procedures are designed to measure the maximum sound output of a snowmobile. The NPS proposes to switch to the J1161 test procedures for several reasons. The J1161 test procedures are more representative of actual operating conditions in the park, where operating snowmobiles at full throttle (as measured by the J192 test procedures) is a rare event. Compliance with the J1161 test procedures is also easier to monitor because park personnel would be able to spot-check the sound output of

snowmobiles as they travel through the park at cruising speed. In contrast, the J192 test procedures require the construction of artificial testing conditions to measure maximum sound output. Also, using the J1161 test procedures for snowmobiles makes it easier for the park to accurately compare the sound output of snowmobiles with the sound output of snowcoaches, which would also be measured using the J1161 test procedures. The NPS specifically seeks comment on the merits of this proposal and welcomes input of industry and other knowledgeable parties on current noise pollution control measures across the snowmobile industry and research and development concerning improvements in noise measurement and control measures. The NPS will evaluate information submitted by industry and other knowledgeable parties in determining how to best achieve noise pollution control and protection in the park.

Because modifications made to an individual snowmobile may increase sound emissions beyond the proposed emission restrictions, individual snowmobiles that have been modified would be denied entry to the park. It would be the responsibility of the commercial tour operator and guide to ensure that a snowmobile complies with all applicable restrictions.

Snowmobiles being operated on the Cave Falls Road would continue to be exempt from the sound emission requirements.

Snowcoaches

As of December 15, 2017, the proposed rule would require that the mean dB(A) output of snowcoaches in Yellowstone National Park not exceed 75 dB(A) when measured by operating the snowcoach at typical cruising speed for the test cycle following the SAE J1161 test procedures. Since there are no testing standards specific to the snowcoach industry, snowcoach measurements for sound are based on emissions testing conducted using SAE J1161 test procedures.

The NPS believes that commercial tour operators can meet the updated snowmobile and new snowcoach sound emission requirements in the proposed rule through the typical turnover of their fleets, as opposed to prematurely removing vehicles from service. However, the NPS specifically seeks comment on the likelihood of OSVs being available that meet the new sound emission requirements by the proposed deadlines, and any significant additional costs associated with complying with these new requirements. The NPS also seeks comment on whether the implantation schedule to the new sound emission requirements for snowcoaches could be accelerated. The NPS notes that the technology to meet the new sound emission standards for snowcoaches is currently available in the commercial marketplace that at least 17 of the 78 snowcoaches in the commercial fleet already meet the new sound emission requirement.

Alternative Accelerated Emission Implementation: Comments Requested

The NPS believes that given existing and demonstrated OSV technology, an accelerated schedule to implement new air and sound emission requirements is reasonable and achievable. The NPS suggests as an alternative to the schedule proposed by this rule that: by the 2015–2016 winter season (rather than the proposed 2017–2018 winter season), the NPS should require all snowmobiles operating in the park to meet the new air and sound emission requirements; and, by the 2016–2017 winter season (rather than the proposed 2017–2018 winter season), the NPS should require all existing snowcoaches operating in the park to meet the new air and sound emission requirements. The NPS believes that this alternative, accelerated, but staggered implementation schedule, which recognizes the higher capital cost of investing in snowcoach engines and exhaust equipment and the fact that commercial tour operators replace snowmobile fleets more frequently than snowcoach fleets, is reasonably achievable. The NPS notes that the technology to meet the new air and sound emission standards for snowcoaches is currently available in the commercial marketplace, that at least 17 of the 78 snowcoaches in the commercial fleet already meet the new sound emission requirement, and as many as 18 of the 78 snowcoaches in the commercial fleet already meet the new air emission requirement. For snowmobiles, the NPS notes that one snowmobile manufacturer currently produces 23 different snowmobile models (across three model years, 2011–2013) that meet the new air emission standards. Therefore, the NPS invites comments on this alternative from industry and other knowledgeable and interested parties.

NPS Will Continue To Certify Snowmobiles and Snowcoaches

An NPS-certified OSV would be a vehicle that has been approved by the NPS for use in Yellowstone National Park by demonstrating that it meets the air and sound emission requirements in this proposed rule. The Superintendent would maintain and annually publish a list of approved snowmobiles by make, model, and year of manufacture that meet NPS requirements. For the winter of 2012–2013, the NPS certified 77 different snowmobile models (from model years 2008–2013, and various manufacturers) as meeting the requirements. When certifying a new snowmobile as meeting NPS requirements, the NPS would also publish how long the certification applies, which would be 6 consecutive winter seasons following its manufacture or until the snowmobile travels 6,000 miles, whichever occurs later. Based on NPS experience, six years or 6,000 miles represents the typical useful life of a snowmobile, and thus provides a purchaser with a reasonable length of time when operation may be allowed within the park. The NPS invites comments on this proposal.

The NPS would also maintain a list of approved snowcoaches that meet the air and sound emissions requirements. Once approved, a snowcoach may operate in the park through the winter season that begins no more than 10 years following its engine manufacture date. To continue to operate in the park during future winter seasons, a snowcoach must be retrofitted with a new engine and emissions equipment to meet existing EPA Tier 2 engine and emission requirements, and re-certified for air and sound emissions. The 10-year clause provides a mechanism to ensure that the least polluting snowcoaches are used in the park and reflects the concept that over time, the efficiency of engines and exhaust emission control systems degrade due to wear and tear. In consultations with the Environmental Protection Agency, it was determined that after 10 years of use, snowcoach engines would emit more pollution than when they first entered service such that they should be replaced. For example, a snowcoach with a model year 2010 engine could operate through the 2020–2021 winter season and would cease to be allowed to operate in the park as of March 15, 2021, if it is not retrofitted with a new engine and re-tested. A snowcoach with a model year 2007 engine could operate through the 2017–2018 winter season and would cease to be allowed to operate in the park as of March 15, 2018, if it is not retrofitted with a new engine and re-tested. A snowcoach with a model year 2006 or earlier engine manufacture date would need to be retrofitted with upgraded engine and

emissions control equipment prior to the start of the 2017–2018 winter season. Because of the large investment in individual snowcoaches, the NPS believes that a 10-year certification period is appropriate. The NPS specifically seeks comments regarding the economic impacts of a 10-year certification period and mandatory retrofit and whether such a requirement is necessary if snowcoaches can demonstrate compliance with current EPA Tier 2 requirements at the end of the 10 year period.

Once the new air and sound emission requirements apply, all snowmobiles and snowcoaches would be required to meet them in order to enter the park. This would include snowmobiles that meet current air and sound emission requirements but do not meet the new requirements, even if they were certified for periods that extend beyond the 2017–2018 season.

Use of Guides Would Still Be Required

To mitigate impacts to wildlife, air quality, natural soundscapes, and visitor and employee safety, the NPS is proposing to continue the requirement that all recreational OSVs operating in the park be accompanied by a guide, except for those operating on the segment of the Cave Falls Road that extends 1 mile into the park from the adjacent national forest. The park would continue to prohibit unguided snowmobile access.

Since the winter of 2004–2005, all snowmobiles and snowcoaches have been led by commercial guides. Commercial guides are employed by commercial tour operators, not by the NPS. Guides have proven effective at keeping groups under speed limits, staying on the groomed road surfaces, reducing conflicts with wildlife, and ensuring other behaviors that are appropriate for visitors to safely and responsibly visit the park. Since implementation of the 100% guiding requirement in December 2004, Yellowstone has observed a pronounced reduction in the number of accidents and law enforcement incidents associated with the use of OSVs, even when accounting for the reduced number of snowmobilers relative to pre-guided use levels.

Non-Commercial Guides Would Be Allowed

In a change from the provisions that have governed OSV use since December 2004, the proposed rule would allow 4 snowmobile transportation events per day of not more than 5 snowmobiles each (including the non-commercial guide) to be led through the park by a non-commercial guide. Each entrance would be allocated 1 non-commercially guided transportation event each day.

Non-commercial guides and the snowmobile operators taking part in non-commercially guided transportation events would be required to comply with certification requirements under a Non-commercially Guided Snowmobile Access Program to be developed and implemented by the park. The certification process would emphasize park rules and regulations, park values and environmental education, required documentation (i.e., documentation of course completion, a special park use entrance permit, valid motor vehicle driver's license, and snowmobile registration and insurance), safety and proper procedures when encountering wildlife and other visitors, safety and emergency protocol, accident causes and mitigation techniques, road conditions, snowmobile operations, and mechanical repair. Educational components of the program would be reinforced during an onsite orientation session on the day of the trip.

To participate in this program, non-commercial guides and snowmobile operators would be required to obtain and possess an entry permit authorizing a non-commercial snowmobile transportation event. These permits would be issued under the Non-commercially Guided Snowmobile Access Program, which would allow non-commercially guided groups to enter the park for a specific date range. The maximum length of a non-commercially guided snowmobile trip would be 2 days and 1 night. These permits would be awarded through an annual lottery system.

Non-commercial snowmobile guides would be directly responsible for the actions of their group. Each non-commercial guide may lead no more than 2 trips per winter season, and must be at least 18 years of age by the first day of the trip. Non-commercial guides would be required to have working knowledge of snowmobile safety, general first aid, snowmobile repair, and navigational technique. It would be preferable that non-commercial guides, or another member of the trip, be familiar with Yellowstone National Park. Non-commercial snowmobile guides would not be allowed to advertise concerning their ''service'' or accept a fee or any type of compensation for organizing or leading a trip. Collecting a fee (monetary compensation) or compensation of any kind payable to an individual, group, or organization for conducting, leading, or guiding a non-commercially guided snowmobile trip would not be allowed (see 36 CFR 5.3). Violating the compensation or advertising restriction may result in administrative revocation of a non-commercial guiding permit or privilege.

These requirements would ensure that the Non-commercially Guided Snowmobile Access Program would result in the same benefits to park resources and management that have resulted from the requirements applicable to commercial guides.

Further details about the Non-commercially Guided Snowmobile Access Program can be found in Appendix C to the final SEIS, available online at *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013 Supplemental Winter Use Plan EIS,'' and then clicking on the link entitled ''Document List.'' Consistent with adaptive management principles, the Superintendent may adjust or terminate this program based upon impacts to park resources and visitor experiences after providing notice in accordance with one or more methods listed in 36 CFR 1.7(a), which include posting signs, making maps available, or publication in a newspaper.

In both commercially and non-commercially guided groups, a snowmobile may not be operated separately from a group within the park. Except in emergency situations, guided parties must travel together and remain within one-third of a mile of the first snowmobile in the transportation event. This would ensure that groups of snowmobiles do not become separated. One-third of a mile would allow for sufficient and safe spacing between individual snowmobiles within the group, and allow the guide to maintain control over the group and minimize impacts.

Designated Routes Remain on Roads Only

Yellowstone's oversnow routes remain entirely on roads used by motor vehicles during other seasons and thus are consistent with the requirements in 36 CFR 2.18(c). OSV use would continue to be allowed only on designated routes. All main road segments would generally remain open for OSV use, but certain side roads would be reserved for ski and snowshoe use only. Certain main road segments would be closed to all OSV travel during parts of the winter, including early season closure for plowing at the North Entrance, and seasonal closures of the East Entrance from December 15–21 and March 2–15. The proposed rule would allow the Superintendent to open or close oversnow routes after taking into consideration the location of

wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors.

What are transportation events?

Size of Transportation Events

The proposed rule manages OSV use by transportation events. A transportation event consists of a group of no more than 10 snowmobiles (including the guide's snowmobile) or one snowcoach. The NPS will implement OSV management by transportation events starting with the 2014–2015 winter season (Phase II). For the first three years, the proposed rule would require the average size of a commercially guided snowmobile transportation event not exceed 7 snowmobiles (including the guide), averaged daily. However, if commercial tour operators voluntarily upgrade their fleets to meet the new air and sound emission standards during the 2014–2015, 2015–2016, or 2016–2017 winter seasons (before these limits become mandatory in the 2017–2018 season), their group sizes will be more flexible. The average group size for a commercially guided snowmobile transportation event consisting entirely of snowmobiles meeting the new air and sound emission requirements would be averaged seasonally (instead of daily), which allows greater flexibility in daily group sizes. As discussed below, this average may increase to 8 if voluntary enhanced emission standards are met during this Phase of the transition. A group still could not exceed the maximum group size of 10 snowmobiles.

Beginning with the 2017–2018 winter season (Phase III), the average size of a commercially guided snowmobile transportation event may not exceed 7 snowmobiles (including the guide), averaged over the course of a winter season. As discussed below, this average may increase to 8 if voluntary enhanced emission standards are met. Authorizing up to 10 snowmobiles per transportation event with a seasonal average of 7 snowmobiles per transportation event (up to a seasonal average of 8 if voluntary enhanced emission standards are met) would allow commercial tour operators to respond to fluctuating visitor demand for access. For example, commercial tour operators may choose to maximize group sizes during busy times, such as holidays, with groups of 10. If this is done, group sizes would need to be smaller later in the season to ensure that the average group size over the course of each season is no more than 7 (or 8 if the voluntary enhanced emission standards are met).

In order for the park to monitor compliance with this rule, each commercial tour operator would be responsible for keeping track of its daily use on a NPS form, including group size and other variables of interest to the NPS, and reporting these numbers to the NPS on a monthly basis. For each transportation event, commercial tour operators would be required to report the departure date, the duration of the trip (in days), the event type (snowmobile or snowcoach), the number of snowmobiles or snowcoaches, the number of visitors and guides, the route and primary destination, and if the transportation event allocation was from another commercial tour operator. Operators would also be required to report their transportation event size averages for the previous month and for the season to-date. Commercial tour operators that exceed the allowed average size of snowmobile transportation events would receive an unsatisfactory rating with potential to temporarily or permanently suspend the commercial tour operator's concession contract or commercial use authorization. In addition to the reporting requirements in the proposed rule, commercial tour operators would still be subject to reporting requirements contained in their concession contracts or commercial use authorizations. The park will use the information in the report described above to track the average and actual use of each commercial tour operator throughout the season, in order to ensure maximum daily limits and seasonal average limits are not exceeded, and to help ensure that commercial tour operators do not receive an unsatisfactory rating or suspension of their contracts. By closely monitoring this information the park can also ensure that commercial tour operators do not run out of authorizations before the end of the season and create a gap when prospective visitors cannot be accommodated. Therefore, the NPS is considering the option of requiring the report referenced above to be submitted every 2 weeks, rather than monthly, and is also exploring options that would allow the report to be submitted through a web-based system. The NPS specifically seeks comment on these potential options, and other means and mechanisms for complying with the reporting requirement.

NPS does not consider it necessary to require a minimum size per transportation event because the use of any number of snowmobiles, no matter how small, would constitute 1 snowmobile transportation event. Since the 2004–2005 winter season (managed use era), snowmobile group size has averaged 6.6 snowmobiles per group.

Voluntary Enhanced Emission Standards for Snowcoaches and Snowmobiles

For commercial tour operators who meet voluntary enhanced emission standards, the size of a snowcoach transportation event and the average size of a snowmobile transportation event will be allowed to increase above those described in the prior section. The NPS believes the enhanced emission standards are attainable, and that the potential for increased revenues from larger transportation events would provide a strong incentive for commercial tour operators to meet these voluntary standards. These incentives would reward commercial tour operators that demonstrate a commitment to lowering the impacts of OSVs by increasing business opportunities and park visitation, while lessening impacts to park resources.

A commercial tour operator would be allowed to include 2 snowcoaches rather than 1 per transportation event, if both snowcoaches emit no more than 71 dB(A) as measured using the SAE J1161 test procedures. This is 4 dB(A) less than the maximum allowed under the proposed sound emission requirements. To be considered one transportation event, the 2 snowcoaches would be required to travel closely together while keeping a safe distance between them. If this enhanced sound emission standard is met by all snowcoaches, commercial tour operators could have an additional 60 snowcoaches in the park on a particular day (if all 50 snowmobile transportation events are used); however, they could not exceed an average of 1.5 snowcoaches per event over the course of a winter season.

Starting in December 2014, the average size of a commercial tour operator's snowmobile transportation events over the course of a winter season would be permitted to increase from 7 to 8 if all snowmobiles in a group emit no more than 65 dB(A) measured using the SAE J1161 test procedures, and no more than 60 g/Kw-hr CO. This is 2 dB(A) less and 30 g/Kw-hr less than the maximum allowed under sound and air emission requirements to be implemented beginning in the 2017–2018 season. Evidence from the SAE Clean Snowmobile Challenge, held annually in Houghton, Michigan, has shown that production snowmobiles fitted with catalytic converters and other pollution minimization devices are able to reduce CO and hydrocarbons

plus oxides of nitrogen (HC + NO_x) tailpipe emissions by up to 98% to an average specific mass of 12.04 and 0.17 g/kW-hr respectively. If these enhanced emission standards are met by all commercially guided snowmobiles, commercial tour operators could lead up to 46 additional snowmobiles through the park each day, averaged over an entire winter season.

Commercial tour operators would be required to demonstrate to the park that their snowcoaches or snowmobiles meet these enhanced emission standards prior to the start of a winter season so that the park can accurately measure that operator's compliance with all of the requirements.

The NPS specifically seeks comment on the merits of this voluntary market-based pollution minimization proposal, and welcomes input of industry and other knowledgeable parties on current pollution control measures across the snowmobile industry, research and development concerning improvements in pollution control measures, as well as the feasibility of various pollution minimization approaches. The NPS will evaluate all of this information in determining how to best achieve air pollution control and protection in the park.

Number of Transportation Events Allowed in the Park

Up to 110 transportation events would be allowed in the park on any given day during the winter season. Four transportation events would be reserved for non-commercially guided tours of no more than 5 snowmobiles, and up to 106 transportation events would be distributed to commercial tour operators via concessions contracts or commercial use authorizations. Commercial tour operators may decide to use their allocation of transportation events for snowmobiles or snowcoaches, but no more than 46 transportation events may consist of commercially guided snowmobile groups per day. If a commercial or non-commercial guide runs an overnight trip into the park, each day of the trip would be considered a separate transportation event.

Consistent with adaptive management principles, the Superintendent may decrease the maximum number of transportation events allowed in the park each day, adjust or terminate the Non-commercially Guided Snowmobile Access Program, redistribute non-commercially guided transportation events, or make limited changes to the transportation events allocated to each entrance, based upon impacts to park resources and visitor experiences after providing public notice in accordance with one or more methods listed in 36 CFR 1.7(a). Before taking any of these actions, the NPS will determine if any additional environmental compliance is required.

Allocation and Maximum Number of Snowmobiles Allowed in the Park

The actual number of snowmobiles and snowcoaches each day in the park would depend upon visitor demand and how commercial tour operators use their transportation events, subject to the maximum limit of 110 transportation events per day. If more than 60 snowcoach transportation events are used, the result would be fewer snowmobiles allowed in the park. If the maximum number of snowmobile transportation events is used, the result would be only 60 snowcoaches allowed in the park, or 120 snowcoaches that meet the voluntary, enhanced sound emission standards.

The proposed rule allocates transportation events to Old Faithful since a commercial tour operator provides snowmobile rentals and commercial guiding services originating there. For example, some visitors choose to enter the park on a snowcoach tour, spend 2 or more nights at the Old Faithful Snow Lodge, and depart for a commercially guided snowmobile tour of the park from the lodge.

Table 1 below shows the daily allocations and entrance distributions for snowmobile transportation events.

TABLE 1

Park Entrance/Location	Daily number of transportation events for commercially guided snowmobiles	Daily number of transportation events for non-commercially guided snowmobiles	Maximum daily number of commercially guided snowmobiles	Seasonal average number of commercially guided snowmobiles	Seasonal average number of commercially guided snowmobiles if all meet enhanced standards*
West Entrance	23	1	230	161	184
South Entrance	16	1	160	112	128
East Entrance	3	1	30	21	24
North Entrance	2	1	20	14	16
Old Faithful	2	0	20	14	16
Total	46	4	460	322	368

* In order for a commercial tour operator's snowmobile transportation events to average 8 snowmobiles in a winter season, all of the snowmobiles in those transportation events must comply with the enhanced air and sound emission standards.

At the highest potential level of use, if all 50 snowmobile transportation events are used in a single day, there could be a maximum of 480 snowmobiles in the park (46 commercially guided groups of 10 snowmobiles each, plus 4 non-commercially guided groups of 5 snowmobiles each). Although this is the maximum number of snowmobiles that could be permitted into the park on a single day, this level of use could not occur every day because commercially guided snowmobile transportation event sizes may not exceed an average of 7 snowmobiles over the course of the season. Maximum average use would be 342 snowmobiles per day (46 commercially guided groups of at the seasonal average of 7, plus 4 non-commercially guided groups of 5 snowmobiles each). If all snowmobiles meet the voluntary enhanced emission standards described above, the maximum average size of snowmobile transportation events over the course of a winter season could increase from 7 to 8 snowmobiles, resulting in an average maximum daily use of 388 snowmobiles per day (46 commercially guided groups

of eight snowmobiles each, plus 4 non-commercially guided groups of 5 snowmobiles each).

Table 2 below shows the maximum number of snowmobiles in the park on any day if all snowmobile transportation events are used.

TABLE 2

	46 Transportation events from commercially guided groups	4 Transportation events from non-commercially guided groups	Total snowmobiles in the park
Peak Day (10 snowmobiles per commercially guided group; 5 per non-commercially guided group	460	20	480
Average Day (7 snowmobiles per commercially guided group; 5 per non-commercially guided group	322	20	342
Average Day if all Snowmobiles meet Enhanced Standards (8 snowmobiles per commercially guided group; 5 per non-commercially guided group	368	20	388

Allocation and Maximum Number of Snowcoaches Allowed in the Park

At the highest potential level of use (with current sound-emission standards), if all 106 transportation events are used by snowcoaches in a single day, there would be 106 snowcoaches in the park. If the maximum allocation of snowmobile transportation events is used in a single day, there could be a maximum of 60 snowcoaches in the park. At some point in the future, if all snowcoaches meet the voluntary enhanced sound emission standards described above, the maximum number of snowcoaches in the park on a particular day could range from 212 snowcoaches (if no snowmobile allocations are used) to 120 snowcoaches (if all snowmobile allocations are used). Although this is the maximum number of snowcoaches that could be permitted into the park on a single day, this level of use could not occur every day because snowcoach transportation events consisting of snowcoaches that meet the voluntary enhanced emission standards may not exceed an average of 1.5 snowcoaches over the course of the season. These scenarios represent the extreme allocation potentials, and it is likely that actual use would end up somewhere in between these scenarios.

Table 3 below shows the maximum number of snowcoaches in the park on any day by park entrance/location.

TABLE 3

Park entrance/location	Number of snowcoaches if all 50 snowmobile transportation events are used	Number of snowcoaches if all 50 snowmobile transportation events are used and snowcoaches meet enhanced sound standards*	Number of snowcoaches if zero commercially guided snowmobile transportation events are used	Number of snowcoaches if zero commercially guided snowmobile transportation events are used and all snowcoaches meet enhanced sound standards*
West Entrance	26	52	47	94
South Entrance	10	20	17	34
East Entrance	2	4	2	4
North Entrance	10	20	17	34
Old Faithful	12	24	23	46
Total	60	120	106	212

*Two snowcoaches can be allowed in a transportation event if both comply with the voluntary enhanced sound standards.

Flexible Allocations at Each Entrance

Commercial tour operators may cooperatively exchange allocations of snowmobile and snowcoach transportation events within an entrance, but transportation event allocations may not be exchanged among different entrances. For example, a commercial tour operator at the West Entrance who has additional transportation event allocations available may trade those allocations to another commercial tour operator at the West Entrance, but an allocation at the West Entrance could not be traded to a commercial tour operator at the South Entrance. These exchanges would provide additional flexibility to commercial tour operators and allow them to respond to visitor demand, while ensuring that the number of transportation events at any particular entrance does not exceed the total number authorized for that day. The NPS envisions that a system for exchanging allocations would be created and controlled by those commercial tour operators who receive entrance allocations under this plan. Commercial tour operators must notify the NPS when transportation event allocations are exchanged.

Avalanche Management—Sylvan Pass

The proposed rule designates the East Entrance road as an OSV route. As with other OSV routes, the Superintendent has the ability to close this route, or portions of it, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. This authority would be used to manage Sylvan Pass in the manner

described in the preferred alternative in the final SEIS.

Section-by-Section Analysis

§ 7.13(l)(1) What is the scope of this regulation?

The regulations apply to the use of snowcoaches and snowmobiles. Except where indicated, the regulations do not apply to non-administrative OSV use by NPS employees, contractors, concessioner employees, or other non-administrative use authorized by the Superintendent.

§ 7.13(l)(2) What terms do I need to know?

The NPS has included definitions for a variety of terms, including commercial guides, commercial tour operator, non-commercially guided groups, oversnow vehicle, oversnow route, unguided snowmobile access, and transportation event.

For snowmobiles, the NPS is continuing to use the definition found at 36 CFR 1.4. The proposed rule would also include language that makes it clear that all-terrain vehicles and utility-type vehicles are not snowmobiles or snowcoaches, even if they have been adapted for use on snow with track and ski systems. These vehicles were not originally designed to operate oversnow and may not meet NPS air and sound emission requirements.

Earlier regulations governing winter use at the park referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of oversnow motorized vehicles will be developed in the future, a definition for ''oversnow vehicle'' was developed to ensure that any such new technology is subject to this regulation. When a particular requirement or restriction only applies to a certain type of OSV, the specific vehicle is stated and the restriction only applies to that type of vehicle, not all OSVs. However, OSVs that do not meet the strict definition of a snowcoach (i.e., both weight and passenger capacity) would be subject to the same requirements as snowmobiles. These definitions may be clarified in future rulemakings based on changes in technology.

In earlier regulations, the NPS specified a size and weight limit for snowcoaches. As the number of larger and heavier snowcoaches has increased, the NPS has observed serious rutting of the groomed road surface caused by heavier snowcoaches. Rutting creates safety issues for other snowcoaches and snowmobiles using the oversnow routes. The NPS is evaluating a suite of management actions to address rutting, which may include placing vehicle weight and size limits in the concession agreements and commercial use authorizations that govern the use of snowcoaches in the park.

§ 7.13(l)(3) When may I operate a snowmobile in Yellowstone National Park?

Provided that the Superintendent has determined there is adequate snow cover, the proposed rule would continue to authorize operation of a snowmobile within the park from December 15 to March 15 each winter season subject to use limits, guiding requirements, operating hours, equipment requirements, emission requirements, and operating conditions. Snowmobile and snowcoach use between Flagg Ranch and the South Entrance of Yellowstone occurs in the John D. Rockefeller, Jr. Memorial Parkway, and is addressed in regulations pertaining to that unit of the National Park System at 36 CFR 7.21(a). Any OSV that enters Yellowstone would be subject to the terms and conditions of this proposed rule.

§ 7.13(l)(4) When may I operate a snowcoach in Yellowstone National Park?

Provided that the Superintendent has determined there is adequate snow cover, the proposed rule would continue to authorize operation of snowcoaches in the park from December 15 to March 15 each winter season, subject to the conditions in this proposed rule. It would require that they be commercially operated under a concessions contract or commercial use authorization and meet the applicable air, weight, and sound emission requirements. Snowcoaches must not exceed 75 dB(A) when measured by operating the snowcoach at cruising speed using the SAE J1161 test procedures. Existing snowcoaches must meet these requirements beginning in the 2017–2018 winter season, while new snowcoaches must meet these requirements upon being put into service beginning in the 2014–2015 winter season.

§ 7.13(l)(5) Must I operate a certain model of snowmobile?

Except for some exemptions that apply to the Cave Falls Road, the proposed rule would continue to require that only snowmobiles that meet NPS air and sound emissions requirements may be operated in the park.

§ 7.13(l)(6) What standards will the Superintendent use to approve snowmobile makes, models, and year of manufacture for use in the park?

Snowmobiles must continue to meet existing air and sound emission requirements through the 2016–2017 winter season. As of December 15, 2017, snowmobiles must operate at or below 67 dB(A) as measured at cruising speed and must be certified under 40 CFR 1051 to a FEL no greater than a total of 15 g/kW-hr for HC and a FEL of no greater than 90 g/kW-hr for CO.

§ 7.13 (l)(7) Where may I operate a snowmobile in Yellowstone National Park?

Specific routes are listed where snowmobiles may be operated, but the proposed rule also provides latitude for the Superintendent to close and reopen routes when necessary. When determining what routes are available for use, the Superintendent would take into consideration weather and snow conditions, public safety, protection of park resources, and other factors.

§ 7.13(l)(8) What routes are designated for snowcoach use?

Snowcoaches may be operated on the specific routes open to snowmobile use. In addition, rubber-tracked snowcoaches may be operated in the Mammoth Hot Springs developed area. This proposed rule also provides latitude for the Superintendent to close and reopen routes when necessary. When determining what routes are available for use, the Superintendent would take into consideration weather and snow conditions, public safety, protection of park resources, and other factors.

§ 7.13(l)(9) Must I travel with a guide while snowmobiling in Yellowstone and what other guiding requirements apply?

The proposed rule retains the existing requirement that, except on the Cave Falls Road, all recreational snowmobile operators must be accompanied by a guide. In addition to commercially guided trips, the proposed rule allows 4 groups of up to 5 snowmobiles to be led into the park by non-commercial guides who have been certified under the Non-commercially Guided Snowmobile Access Program. The proposed rule maintains the requirements that guided parties must travel together and not be separated by more than one-third of a mile from the first snowmobile in the group to ensure groups stay together for safety considerations.

§ 7.13(l)(10) Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the park each day?

As described above, the park will manage OSV use by limiting the size and number of snowmobile and snowcoach transportation events on any given day. No more than 110 transportation events would be allowed in the park on any day. Four transportation events would be reserved for non-commercially guided groups, and up to 106 transportation events would be allocated to commercial tour operators via concession contracts or commercial use authorizations. Commercial tour operators may use their transportation events for snowmobiles or snowcoaches, provided that no more than 46 commercially guided transportation events may consist of snowmobiles. The maximum size of a commercially guided snowmobile transportation event would be 10 snowmobiles, with a maximum average size of 7 over the course of a winter season. The maximum average size of a snowmobile transportation event may increase from 7 to 8 if all of the snowmobiles in a group meet voluntary, enhanced emission standards. The maximum size of a snowcoach transportation event will initially be 1 snowcoach, but may increase to 2 snowcoaches, not to exceed a seasonal average of 1.5 snowcoaches per event, if the vehicles meet voluntary, enhanced sound emission standards.

§ 7.13(l)(11) How will the park monitor compliance with the required average and maximum size of transportation events?

In order for the park to monitor compliance with this rule, each commercial tour operator would be responsible for keeping track of its daily use on a NPS form, including group size and other variables of interest to the NPS, and reporting these numbers to the NPS on a monthly basis. For each transportation event, commercial tour operators would be required to report the departure date, the duration of the trip (in days), the event type (snowmobile or snowcoach), the number of snowmobiles or snowcoaches, the number of visitors and guides, the route and primary destination, and if the transportation event allocation was from another commercial tour operator. Operators would also be required to report their transportation event size averages for the previous month and for the season to-date.

§ 7.13(l)(12) How will I know when I can operate a snowmobile or snowcoach in the park?

The proposed rule would not change the methods the Superintendent would use to determine operating hours. In the past, the Superintendent has set the opening and closing hours at 7:00 a.m. and 9:00 p.m. respectively. Early and late entries were granted on a case-by-case basis. The proposed rule allows the Superintendent to manage operating hours, dates, and use levels with public notice provided through one or more methods listed in 36 CFR 1.7(a). These methods could include signs, maps, public notices, or other publications. Except for emergency situations, any changes to operating hours, dates, or use levels will be made on an annual basis. Initially, the Superintendent intends to set the operating hours as 7:00 a.m. to 9:00 p.m. with no early entries or late exits allowed except for administrative travel and emergencies.

§ 7.13(l)(13) What other conditions apply to the operation of OSVs?

The proposed rule maintains existing requirements regarding the operation of OSVs in the park, such as driver's license and registration requirements, operating procedures, requirements for headlights, brakes, and other safety equipment, length of idling time (which has been reduced from 5 to 3 minutes), maximum speed limit (35mph), towing of sleds, and other requirements related to safety and impacts to resources. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other OSVs as long as no person or animal is hauled on them.

§ 7.13(l)(14) What conditions apply to alcohol use while operating an OSV?

The proposed rule does not change the conditions applicable to the use of alcohol while operating OSVs. Although the regulations in 36 CFR 4.23, concerning the operation of motor vehicles in units of the National Park System while under the influence of alcohol or drugs, apply to snowmobiles under 36 CFR 2.18(a), the proposed rule maintains the additional regulations that address under-age drinking while operating a snowmobile, and operation under the influence by snowcoach operators or snowmobile guides while performing services for others. Many states have adopted similar alcohol standards for under-age and commercial operators, and the NPS believes it is necessary to specifically include these regulations to help mitigate potential safety concerns.

The alcohol level for under-age drinkers (anyone under the age of 21) is set at .02 Blood Alcohol Content (BAC). Although the NPS endorses ''zero tolerance,'' a very low BAC is established to avoid a chance of a false reading. Mothers Against Drunk Driving and many other organizations have endorsed such a general enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, should not be allowed.

In the case of snowcoach operators or snowmobile guides, a low BAC limit is also necessary. Persons operating a snowcoach are likely to be carrying 8 or more passengers in a vehicle. Vehicles on tracks or skis are more challenging to operate than a wheeled vehicle, and on oversnow routes that can present significant hazards, especially if the driver has impaired judgment. Similarly, persons guiding others on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and for minimizing impacts to park wildlife and other resources. If the guide's judgment is impaired, hazards such as wildlife on the road or snow-obscured features could endanger all members of the group in an unforgiving climate. For these reasons, the proposed rule would continue to require that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the proposed rule continues a BAC limit of .04 for snowcoach operators and snowmobile guides. This limit applies for both commercial guides and non-commercial guides. This is consistent with other federal and state rules pertaining to BAC thresholds for someone with a commercial driver's license.

§ 7.13(l)(15) Do other NPS regulations apply to the use of OSVs?

The proposed rule does not change the applicability of other NPS regulations concerning OSV use. Relevant portions of 36 CFR 2.18, including § 2.18(c), have been incorporated into these proposed regulations. Some portions of 36 CFR 2.18 and 2.19 would be superseded by the proposed rule, which governs maximum operating decibels, operating hours, and operator age in this park only. In addition, 36 CFR 2.18(b), which adopts non-conflicting state snowmobile laws, would not apply in Yellowstone. The proposed rule would also supersede 36 CFR 2.19(b). The proposed rule

similarly prohibits the towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, but does not permit designation of routes or areas for those activities. It also includes exceptions for emergency situations and for the administrative use of trailers specifically designed for towing passengers. Other provisions of 36 CFR Chapter I would continue to apply to the operation of OSVs unless specifically superseded by the proposed rule.

§ 7.13(l)(16) What forms of non-motorized oversnow transportation are allowed in the park?

Non-motorized travel consisting of skiing, skating, snowshoeing, and walking is generally permitted. The park has specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs, a horse, or a vehicle) to prevent disturbance or harassment to wildlife and for visitor safety. These restrictions have been in place for several years and would be reaffirmed by this rule.

§ 7.13(l)(17) May I operate a snowplane in Yellowstone National Park?

Snowplanes may not be used in Yellowstone National Park.

§ 7.13(l)(18) Is violating a provision of this section prohibited?

Violating a term, condition, or requirement of paragraphs (l)(1) through (l)(17) of § 7.13 is prohibited.

Compliance With Other Laws, Executive Orders, and Department Policies

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analysis found in the report entitled ''Economic Analysis of Winter Use Regulations in Yellowstone National Park (2012)'' which can be viewed on the park's planning Web site, *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013 Supplemental Winter Use Plan EIS,'' and then clicking on the link entitled ''Document List.''

From the analysis of costs and benefits using Baseline 1, the NPS concludes that the action alternatives would mitigate the impacts on most small businesses relative to the impacts under Baseline 1. In cases where the action alternatives cause reduced revenues for a few specific firms compared to Baseline 1, the NPS expects that the declines would be very small. From the analysis using Baseline 2, the NPS concludes the following points:

Relative to Baseline 2, Alternatives 3 and 4 are estimated to result in increased revenues for the snowmobile rental and snowcoach sectors.

Alternative 1 has the potential to generate significant losses for small businesses.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S.-based enterprises.

These conclusions are based upon the cost-benefit and regulatory flexibility analysis found in the report entitled ''Economic Analysis of Winter Use Regulations in Yellowstone National Park (2012)'' which can be viewed on the park's planning Web site, *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013 Supplemental Winter Use Plan EIS,'' and then clicking on the link entitled ''Document List.''

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, the rule does not have significant takings implications. Access to private property located adjacent to the park will be afforded the same access during winter as before this rule. No other private property is affected. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to

consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. Numerous tribes in the area were consulted in the development of the previous winter use planning documents.

Paperwork Reduction Act (PRA)

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements associated with NPS special park use permits and assigned OMB Control Number 1024–0026, which expires 06/30/2013. This rule contains new reporting and recordkeeping requirements that must be approved by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*).

(1) To ensure that snowcoaches and snowmobiles meet NPS emission and sound standards, we are proposing that, before the start of each winter season:

(a) Snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the standards.

(b) Snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the standards.

(2) So that we can monitor compliance with the required average and maximum size of transportation events, we propose that as of December 15, 2014, each commercial tour operator must:

(a) Maintain accurate and complete records of the number of snowmobiles and snowcoaches he or she brings into the park on a daily basis. These records must be made available for inspection by the park upon request.

(b) Submit a monthly report to the park that includes the following information about snowmobile and snowcoach use:

- Average group size for allocated transportation events during the previous month and for the winter season to date. Any transportation events that have been exchanged among commercial tour operators must be noted and the receiving party must include these transportation events in his or her reports.
- For each transportation event, the departure date, the duration of the trip (in days), the event type (snowmobile or snowcoach), the number of snowmobiles or snowcoaches, the number of visitors and guides, the route and primary destination(s), and if the transportation event allocation was from another commercial tour operator.

(3) To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, each commercial tour operator must:

- Before the start of the winter of the winter season, demonstrate to the park Superintendent that his or her snowmobiles or snowcoaches meet the enhanced emission standards.
- Maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not.

Title: Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park, 36 CFR 7.13(l).

OMB Control Number: 1024–XXXX.

Service Form Number: None.

Type of Request: Request for a new OMB Control Number.

Description of Respondents: Commercial businesses operating OSVs in Yellowstone National Park, and OSV manufacturers.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Monthly for reports; ongoing for recordkeeping; annually to demonstrate that OSVs meet or exceed emission standards.

Estimated number of respondents: 17 (15 commercial tour operators and 2 manufacturers).

Activity	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours*
Meet Emission/Sound Standards—Snowcoaches (7.13(l)(4)(vi)	12	.5	6
Meet Emission/Sound Standards—Snowmobiles (7.13(l)(5)	2	.5	1
Report and Recordkeeping (7.13(l)(11)(i)–(iii))	45	2	90
Meet Enhanced Emission Standards (7.13(l)(11)(iv))	5	.5	3
Total	64		100

* rounded.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–AE15 in the subject line of your comments.

National Environmental Policy Act

This rule constitutes a major federal action with the potential to significantly affect the quality of the human environment. We have prepared the final SEIS under the National Environmental Policy Act of 1969. The final SEIS is available by contacting the Yellowstone National Park Management Assistant's Offices and online at *http://parkplanning.nps.gov/yell,* by clicking on the link entitled ''2012/2013

Supplemental Winter Use Plan EIS,'' and then clicking on the link entitled ''Document List.''

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

Drafting Information

The primary authors of this regulation are: Jay P. Calhoun, Regulations Program Specialist; and Russel J. Wilson, Chief, Regulations and Special Park Uses, National Park Service, Washington Office; David Jacob, Environmental Protection Specialist, National Park Service, Environmental Quality Division; and Wade Vagias, Management Assistant, Yellowstone National Park.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

We are particularly interested in comments concerning:

(1) The likelihood of OSVs being available by the stated deadlines that meet either the sound or air emissions BAT requirements and any significant additional costs associated with meeting the sound and air emissions BAT.

(2) Whether the deadlines are:

(a) Sufficiently in the future to allow concessioners to update fleet with BAT-compliant vehicles, as opposed to prematurely removing vehicles from service, or

(b) Too far into the future such that the implementation schedule for meeting the air and sound emission BAT requirements should be accelerated. Specifically, the NPS seeks comments from industry and other knowledgeable parties regarding the implementation schedule for the new emission requirements and if the implementation schedule could be accelerated because the technology necessary to meet these new requirements will be available sooner than the start of the 2017–2018 season.

The NPS believes that given existing and demonstrated OSV technology, an accelerated schedule to implement new air and sound emission requirements is reasonable and achievable. The NPS suggests as an alternative to the schedule proposed by this rule that: by the 2015–2016 winter season (rather than the proposed 2017–2018 winter season), NPS should require all snowmobiles operating in the park to meet the new air and sound emission requirements; and, by the 2016–2017 winter season (rather than the proposed 2017–2018 winter season), NPS should require all existing snowcoaches operating in the park to meet the new air and sound emission requirements. The NPS believes that this alternative, accelerated, but staggered implementation schedule, which recognizes the higher capital cost of investing in snowcoach engines and exhaust equipment and the fact that commercial tour operators replace snowmobile fleets more frequently than snowcoach fleets, is reasonably achievable. The NPS notes that the technology to meet the new air and sound emission standards for snowcoaches is currently available in the commercial marketplace, that at least 17 of the 78 snowcoaches in the commercial fleet already meet the new sound emission requirement and as many as 18 of the 78 snowcoaches in the commercial fleet already meet the new air emission requirement. For snowmobiles, the NPS notes that one snowmobile manufacturer currently produces 23 different snowmobile models (across three model years, 2011–2013) that meet the new air emission standards. Therefore, the NPS invites comments on this alternative from industry and other knowledgeable and interested parties.

(3) Whether air quality goals can be attained more cost-effectively without making the BAT requirements for CO more stringent and instead managing entry times and access in areas of the park where air quality has been degraded.

(a) If it is more cost-effective to improve air quality through managed access, what would be a feasible approach?

(4) Given the small number of transportation events, the impact of not making BAT requirements more stringent for the non-commercial guided program.

(5) Whether there are more cost-effective performance-based approaches that could be used to meet emissions requirements, as opposed to prescribing certain design specifications for snowmobiles and snowcoaches?

Public Availability of Comments

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

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201.07 (2001).

■ 2. In § 7.13 revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (1)(15) of this section apply to the recreational use of snowcoaches and snowmobiles. Except where indicated, paragraphs (1)(2)

through (l)(15) do not apply to non-administrative oversnow vehicle use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non-administrative oversnow vehicle use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

Commercial guide means a person who operates as a snowmobile or snowcoach guide for a monetary fee or other compensation and is authorized to operate in the park under a concession contract or a commercial use authorization.

Commercial tour operator means a person authorized to operate oversnow vehicle tours in the park under a concession contract or a commercial use authorization.

Enhanced emission standards means for snowmobiles, a maximum of 65 dB(A) as measured at cruising speed (approximately 35 mph) in accordance with the Society of Automotive Engineers (SAE) J1161 test procedures and certified under 40 CFR Part 1051 to a Family Emission Limit no greater than 60 g/kW-hr for carbon monoxide; and for snowcoaches, a maximum of 71 dB(A) when measured by operating the snowcoach at cruising speed for the test cycle in accordance with the SAE J1161 test procedures.

Guide means a commercial guide or a non-commercial guide.

Non-commercial guide means a person who has successfully completed the Yellowstone Snowmobile Education Certification Program and is certified as having the requisite knowledge and skills to operate a snowmobile in Yellowstone National Park. Non-commercial guides must be at least 18 years of age by the day of the trip and possess a valid state-issued motor vehicle driver's license and a non-commercial snowmobile access permit before entering the park.

Non-commercially guided group means a group of no more than five snowmobiles, including a non-commercial guide, permitted to enter the park under the Non-commercially Guided Snowmobile Access Program.

Non-commercially Guided Snowmobile Access Program means a program that permits authorized parties to enter Yellowstone National Park without a commercial guide.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. All-terrain vehicles and utility-type vehicles are not oversnow vehicles, even if they have been modified for use on snow with track or ski systems

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers and no more than 32 passengers, plus a driver.

Snowcoach transportation event means one snowcoach that does not meet enhanced emission standards traveling in Yellowstone National Park on any given day, or two snowcoaches that both meet enhanced emission standards traveling together in Yellowstone National Park on any given day.

Snowmobile means a self-propelled vehicle intended for travel solely on snow, with a maximum curb weight of 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

Snowmobile transportation event means a group of 10 or fewer commercially guided snowmobiles traveling together in Yellowstone National Park on any given day or a non-commercially guided group, which is defined separately. Snowmobiles entering Cave Falls Road are not considered snowmobile transportation events.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

Transportation event means a snowmobile transportation event or a snowcoach transportation event.

(3) *When may I operate a snowmobile in Yellowstone National Park?* Provided that the Superintendent has determined there is adequate snow cover, you may operate a snowmobile in Yellowstone National Park from December 15 through March 15 each winter season only in compliance with use limits, guiding requirements, operating hours, equipment, and operating conditions established under this section. The operation of snowmobiles under a concessions contract or commercial use authorization is subject to the conditions stated in the concessions contract or commercial use authorization. The Superintendent may establish additional operating conditions after providing notice of those conditions in accordance with one or more methods listed in 36 CFR 1.7(a).

(4) *When may I operate a snowcoach in Yellowstone National Park?* (i) Provided that the Superintendent has determined there is adequate snow cover, a snowcoach may be operated in Yellowstone National Park only under a concessions contract or commercial use authorization from December 15 through March 15 each winter season. Snowcoach operation is subject to the conditions stated in the concessions contract or commercial use authorization and all other conditions identified in this section. The requirements in paragraphs (l)(4)(ii)–(iii) of this section apply to existing snowcoaches as of December 15, 2017, and to new snowcoaches put into service on or after December 15, 2014.

(ii) The following air emission requirements apply to snowcoaches:

A snowcoach that is a . . .	Must meet the following standard . . .
(A) Diesel-fueled snowcoach with a gross vehicle weight rating (GVWR) less than 8,500 pounds.	The functional equivalent of 2010 (or newer) EPA Tier 2 model year engine and emission control technology requirements.
(B) Diesel-fueled snowcoach with a GVWR greater than or equal to 8,500 pounds.	The EPA model year 2010 ''engine configuration certified'' diesel air emission requirements. Alternately, a snowcoach in this category may be certified under the functional equivalent of 2010 (or newer) EPA Tier 2 model year engine and emission control technology requirements if the snowcoach:
	(*1*) Has a GVWR between 8,500 and 10,000 pounds; and

A snowcoach that is a . . .	Must meet the following standard . . .
	(*2*) Would achieve better emission results with a configuration that meets the Tier 2 requirements.
(C) Gasoline-fueled snowcoach greater than or equal to 10,000 GVWR	The functional equivalent of 2008 (or newer) EPA Tier 2 model year engine and emission control technology requirements.
(D) Gasoline-fueled snowcoach less than 10,000 GVWR	The functional equivalent of 2007 (or newer) EPA Tier 2 model year engine and emission control technology requirements.

(iii) A snowcoach may not exceed a sound level of 75 dB(A) when measured by operating the snowcoach at cruising speed for the test cycle in accordance with the SAE J1161 test procedures.

(iv) All emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must function properly. These emission-related components must be replaced with the original equipment manufacturer (OEM) component, if practicable. If OEM parts are not available, aftermarket parts may be used.

(v) Operating a snowcoach with the original pollution control equipment disabled or modified is prohibited.

(vi) Before the start of a winter season a snowcoach manufacturer or a commercial tour operator must demonstrate, by means acceptable to the Superintendent, that its snowcoach(s) meet the air and sound emission standards. A snowcoach meeting the requirements for air and sound emissions may be operated in the park through the winter season that begins no more than 10 years from the engine manufacture date.

(vii) Snowcoaches are subject to periodic and unannounced inspections to determine compliance with the requirements of paragraph (l)(4) of this section.

(viii) This paragraph (l)(4) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile?* Only snowmobiles that meet NPS air and sound emissions requirements in this section may be operated in the park. Before the start of a winter season a snowmobile manufacturer must demonstrate, by means acceptable to the Superintendent, that its snowmobile(s) meet the air and sound emission standards. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *What standards will the Superintendent use to approve snowmobile makes, models, and years of manufacture for use in the park?* (i) Snowmobiles must meet the following air emission requirements:

(A) Through March 15, 2017, all snowmobiles must be certified under 40 CFR Part 1051 to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(B) As of December 15, 2017, all snowmobiles must be certified under 40 CFR Part 1051 to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 90 g/kW-hr for carbon monoxide.

(ii) Snowmobiles must meet the following sound emission requirements:

(A) Through March 15, 2017, snowmobiles must operate at or below 73 dB(A) as measured at full throttle according to SAE J192 test procedures (revised 1985). During this period, snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(B) As of December 15, 2017, snowmobiles must operate at or below 67 dB(A) as measured at cruising speed (approximately 35mph) in accordance with SAE J1161 test procedures. Sound emissions tests must be accomplished within the barometric pressure limits of the test procedure; there will be no allowance for elevation. The Superintendent may revise these testing procedures based on new information or updates to the SAE J1161 testing procedures.

(iii) A snowmobile meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the manufacturing date, or after the snowmobile has travelled 6,000 miles, whichever occurs later.

(iv) Operating a snowmobile that has been modified in a manner that may adversely affect air or sound emissions is prohibited.

(v) These air and sound emissions requirements do not apply to snowmobiles operated on the Cave Falls Road in the park.

(vi) Snowmobiles are subject to periodic and unannounced inspections to determine compliance with the requirements of paragraph (l)(6) of this section.

(vii) This paragraph (l)(6) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

(7) *Where may I operate a snowmobile in Yellowstone National Park?* (i) You may operate an authorized snowmobile only upon designated oversnow routes established within the park in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction;

(B) The Grand Loop Road from Norris Junction to Canyon Junction;

(C) The Grand Loop Road from Norris Junction to Madison Junction;

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction;

(E) The Grand Loop Road from Madison Junction to West Thumb;

(F) The South Entrance Road from the South Entrance to West Thumb;

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road;

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance;

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction;

(J) The South Canyon Rim Drive;

(K) Lake Butte Road;

(L) Roads in the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris;

(M) Firehole Canyon Drive;

(N) North Canyon Rim Drive;

(O) Riverside Drive; and

(P) Cave Falls Road.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. The Superintendent will provide public notice of any opening or closing by one

or more of the methods listed in 36 CFR 1.7(a).

(iii) This paragraph (l)(7) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, or concessioner employees, or other non-administrative users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes are available at Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraph (l)(7)(i) of this section. Rubber-tracked snowcoaches may also be operated on the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. The Superintendent will provide public notice of any opening or closing by one of more of the methods listed in 36 CFR 1.7(a).

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

(9) *Must I travel with a guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a guide.

(ii) Unguided snowmobile access is prohibited.

(iii) The Superintendent will establish the requirements, including training and certification requirements for commercial guides and non-commercial guides and accompanying snowmobile operators.

(iv) Guided parties must travel together within one-third of a mile of the first snowmobile in the group.

(v) The guiding requirements described in this paragraph (l)(9) do not apply to Cave Falls Road.

(10) *Are there limits upon the number of snowmobiles and snowcoaches permitted to operate in the park each day?* As of December 15, 2014, the number of snowmobiles and snowcoaches permitted to operate in the park each day will be managed by transportation events, as follows:

(i) A transportation event consists of a group of no more than 10 snowmobiles (including the guide) or one snowcoach (unless enhanced emission standards allow for two).

(ii) No more than 110 transportation events may occur in Yellowstone National Park on any given day.

(iii) No more than 50 of the 110 transportation events allowed each day may be snowmobile transportation events.

(iv) Four of the 50 snowmobile transportation events allowed each day are reserved for non-commercially guided groups, with one such group allowed per entrance each day. The Superintendent may adjust or terminate the Non-commercially Guided Snowmobile Access Program, or redistribute non-commercially guided transportation events, based upon impacts to park resources and visitor experiences, after providing public notice in accordance with one or more methods listed in 36 CFR 1.7(a).

(v) Allocations of transportation events may be exchanged among commercial tour operators, but only for the same entrance or location.

(vi) Commercial tour operators may decide whether to use their daily allocations of transportation events for snowmobiles or snowcoaches, subject to the limits in this section.

(vii) Transportation events may not exceed the maximum number of oversnow vehicles allowed for each transportation event.

(viii) Snowmobile transportation events conducted by a commercial tour operator may not exceed an average of 7 snowmobiles, averaged over the winter season. However, snowmobile transportation events conducted by a commercial tour operator that consist entirely of snowmobiles meeting enhanced emission standards may not exceed an average of 8 snowmobiles, averaged over the winter season. For the 2014–2015 through 2016–2017 winter seasons, snowmobile transportation events conducted by a commercial tour operator that consist of any snowmobile that does not meet the air emission requirements in paragraph (6)(i)(B) of this section or the sound emission requirements in paragraph (6)(ii)(B) of this section may not exceed an average of 7 snowmobiles, averaged daily.

(ix) Snowcoach transportation events that consist entirely of snowcoaches meeting enhanced emission standards may not exceed an average of 1.5 snowcoaches, averaged over the winter season.

(x) A concessioner that is allocated a transportation event, but does not use it or exchange it can count that event as ''0'' against that concessioner's daily and seasonal averages. A concessioner that receives a transportation event from another concessioner, but does not use it, may also count that event as ''0'' against its daily and seasonal averages.

(xi) Up to 50 snowmobiles may enter Cave Falls Road each day.

(xii) Daily allocations and entrance distributions for transportation events are listed in the following table:

Park Entrance/location	Commercially guided snowmobile transportation events	Non-commercially guided snowmobile transportation events	Snowcoach transportation events
West Entrance	23	1	47
South Entrance	16	1	17
East Entrance	3	1	2
North Entrance	2	1	17
Old Faithful	2	0	23
Total	46	4	106

(xiii) The Superintendent may decrease the maximum number of transportation events allowed in the park each day, or make limited changes to the transportation events allocated to each entrance, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. The Superintendent will provide public notice of changes by one or more of the methods listed in 36 CFR 1.7(a).

(xiv) For the 2013–2014 winter season only, the number of snowmobiles and

snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location as set forth in the following table. During this period, all recreational snowmobile operators must be accompanied by a commercial guide. Snowmobile parties must travel in a group of no more than 10 snowmobiles, including the guide.

NUMBER OF SNOWMOBILES AND SNOWCOACHES ALLOWED IN THE PARK ON ANY DAY BY PARK ENTRANCE/LOCATION FOR THE 2013–2014 WINTER SEASON

Park entrance/location	Commercially guided snowmobiles	Commercially guided snowcoaches
West Entrance	160	34
South Entrance	114	13
East Entrance	20	2
North Entrance *	12	13
Old Faithful *	12	16

* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by one concessioner. Because this concessioner is the sole provider at both of these areas, this regulation allows reallocation of snowmobiles between the North Entrance and Old Faithful as necessary, so long as the total daily number of snowmobiles originating from the two locations does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing the availability of visitor services in Yellowstone.

(xv) Paragraph (l)(10)(xiii) remains in effect until March 15, 2014.

(11) *How will the park monitor compliance with the required average and maximum size of transportation events?* As of December 15, 2014: (i) Each commercial tour operator must maintain accurate and complete records of the number of snowmobiles and snowcoaches it has brought into the park on a daily basis.

(ii) The records kept by commercial tour operators under paragraph (l)(11)(i) of this section must be made available for inspection by the park upon request.

(iii) Each commercial tour operator must submit a monthly report to the park that includes the following information about snowmobile and snowcoach use:

(A) Average group size for allocated transportation events during the previous month and for the winter season to date. Any transportation events that have been exchanged among commercial tour operators must be noted and the receiving party must include these transportation events in its reports.

(B) For each transportation event; the departure date, the duration of the trip (in days), the event type (snowmobile or snowcoach), the number of snowmobiles or snowcoaches, the number of visitors and guides, the entrance used, route, and primary destination(s), and if the transportation event allocation was from another commercial tour operator.

(iv) To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, a commercial tour operator must:

(A) Demonstrate before the start of a winter season, by means acceptable to the Superintendent, that his or her snowmobiles or snowcoaches meet the enhanced emission standards; and

(B) Maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not to allow the park to measure compliance with required average and maximum sizes of transportation events.

(12) *How will I know when I can operate a snowmobile or snowcoach in the park?* The Superintendent will:

(i) Determine operating hours, dates, and use levels;

(ii) Notify the public of operating hours, dates, use levels, and any applicable changes through one or more of the methods listed in § 1.7(a) of this chapter; and

(iii) Except for emergency situations, announce annually any changes to the operating hours, dates, and use levels.

(13) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 3 minutes at any one time;

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked;

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle;

(D) Driving an oversnow vehicle with disregard for the safety of persons, property, or park resources, or otherwise in a reckless manner;

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight;

(F) Operating an oversnow vehicle that does not have brakes in good working order;

(G) The towing of persons on skis, sleds, or other sliding devices by oversnow vehicles, except for emergency situations or administrative use of a trailer or other mode of conveyance specifically designed for carrying passengers while being towed; and

(H) Racing snowmobiles, or operating a snowmobile in excess of 35 mph, or operating a snowmobile in excess of any lower speed limit in effect under § 4.21(a)(1) or (2) of this chapter or that has been otherwise designated.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured. Oversnow vehicle may not be operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess and carry at all times a valid state-issued motor vehicle driver's license. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from a state or province in the United States or Canada.

(E) The only motor vehicles permitted on oversnow routes are oversnow vehicles.

(F) An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will

notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (l)(13) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, or concessioner employees, or other non-administrative users authorized by the Superintendent.

(14) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is under 21 years of age and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood, or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (1)(14) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, or concessioner employees, or other non-administrative users authorized by the Superintendent.

(15) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18(b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(15) also applies to non-administrative oversnow vehicle use by NPS employees, contractors, concessioner employees, or other non-administrative users authorized by the Superintendent.

(16) *What forms of non-motorized oversnow transportation are allowed in the park?*

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen previously closed areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources. The Superintendent will notify the public in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring (a skier being pulled by a dog, horse, or vehicle) are prohibited. Bicycles, including bicycles modified for oversnow travel, are not allowed on oversnow routes in Yellowstone.

(17) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(18) *Is violating a provision of this section prohibited?* (i) Violating a term, condition, or requirement of paragraph (l) of this section is prohibited.

(ii) Violation of a term, condition, or requirement of paragraph (l) of this section by a guide may also result in the administrative revocation of guiding privileges.

(19) *Have the information collection requirements been approved?* The Office of Management and Budget has reviewed and approved the information collection requirements in paragraph (l) and assigned OMB Control No. 1024–XXXX. We will use this information to monitor compliance with the required average and maximum size of transportation events. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on any aspect of this information collection to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW., Washington, DC 20240.

* * * * *

Dated: February 21, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–08893 Filed 4–15–13; 8:45 am]

BILLING CODE 4312–EJ–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket Nos. RM2011–2 and RM2013–2; Order No. 1678]

Administrative Practice and Procedure; Postal Service; Review of Price Cap Rules

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is initiating a review of its Price Cap Rules. The review seeks to clarify how to the maximum amount of rate adjustments in postal rate cases is determined and applied. It also seeks to improve other aspects of the process of adjusting rates for market dominant products. This notice informs the public of the review, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 16, 2013. *Reply comments are due:* May 31, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

Regulatory History

72 FR 5230, February 5, 2007
72 FR 29284, May 25, 2007
72 FR 33261, June 15, 2007
72 FR 50744, September 4, 2007
72 FR 63622, November 9, 2007

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

With this notice of proposed rulemaking, the Commission is initiating review of its rules in 39 CFR part 3010 and requesting comments and suggestions to clarify or improve the manner in which part 3010 implements statutory directives and policies previously expressed in Commission orders.

The purposes of this rulemaking are to clarify the Commission's rules for determining and applying the maximum amount of rate adjustments in rate cases before the Commission and to improve other aspects of the process of adjusting rates for market dominant products. The proposed rules are intended to provide more certainty for the Postal Service and the mailing community as they make decisions that rely upon the Postal Service's authority to adjust rates for market dominant products under 39 U.S.C. 3622(d) and part 3010.

II. Background

Five ''regular'' rate cases have come before the Commission since the promulgation of 39 CFR part 3010.[1] Initially, the Commission's rules in part 3010 were successfully applied in several proceedings without the Postal

[1] *See* 39 U.S.C. 3622(d)(1)(B). The five cases are: Docket No. R2008–1; Docket No. R2009–2; Docket No. R2011–1; Docket No. R2012–3; and Docket No. R2013–1.

Service or other parties requesting additional clarification.[2] However, beginning in 2010, the Commission began to identify circumstances that led to confusion about the correct application of the rules. The following is a summary of the Commission's more recent experiences applying part 3010 in rate cases.

Postal Service request for clarification. On October 6, 2010, in preparation for its upcoming notice of rate adjustment, the Postal Service sought clarification of the application of 39 CFR 3010.26 (relating to the calculation of unused rate adjustment authority) to notices of rate adjustment filed more than 12 months apart and in periods when the CPI–U is in decline.[3] The Commission's General Counsel replied to the Postal Service in a letter providing ''informal advice'' on the interpretation of part 3010.[4] A mailer coalition also replied to the Postal Service's request for interpretation. The coalition suggested that the amount calculated as unused rate adjustment authority when notices of rate adjustments are filed more than 12 months after the previous notice of rate adjustment, should, contrary to the Commission's view, be applied to reduce the calculated annual limitation on market dominant rate adjustments.[5]

Docket No. R2011–1 and Order No. 606. On November 2, 2010, the Postal Service submitted a notice of rate adjustment, in order to provide pricing incentives for Reply Rides Free and Saturation and High Density Standard Mail and to revise the threshold for the Move Update Assessment Charge.[6] On November 10, 2010, the Commission issued a Chairman's Information Request concerning the Postal Service's calculation of annual limitations and unused rate adjustment authority.[7] CHIR No. 1 prompted the Postal Service to respond that it was still ''uncertain how the rules defining the price cap should be applied.'' [8] The Commission's Order No. 606 included an extensive discussion of the price cap rules and their application to a situation in which (1) notices of rate adjustment are filed more than 12 months apart; and (2) CPI–U declines.[9]

Petition for rulemaking. On the same day, the Commission issued CHIR No. 1, the Postal Service filed a petition for rulemaking regarding unused rate adjustment authority calculations.[10] The Petition for Rulemaking requests ''formal clarification of whether 39 CFR 3010.26(c)(1)–(3) or the CPI–U data provided on the Commission's Web site determine the amount of unused rate adjustment authority when rate adjustments are more than 12 months apart.'' *Id.* at 3. The Commission responded to this request in Order No. 606, which the Commission characterized as ''the formal determination sought by the Postal Service in its Petition for Rulemaking.'' [11] Order No. 606 did not close the docket on the Petition for Rulemaking; instead, it promised to initiate a rulemaking ''to avoid future confusion.'' *Id.* Because this docket provides an opportunity to address the concerns expressed by the Postal Service in its Petition for Rulemaking, the Commission will now close Docket No. RM2011–2.

Docket No. R2012–3 and Order No. 987. The confusion over the correct application of part 3010 appeared to have abated in the 2012 rate case.[12] The Postal Service correctly calculated the applicable maximum rate adjustments, even though data for the full fiscal year 2011 were not yet available. *Id.* at 2.

Docket No. R2013–1 and Order Nos. 1541 and 1573. In Order No. 1541, the Commission remanded Standard Mail Flats rates and stated that the Postal Service had unused rate adjustment authority available to it from Docket No. R2008–1 and Docket No. R2009–2.[13] In its response to Order No. 1541, the Postal Service observed that the statement appeared to be at odds with 39 CFR 3010.28 and Order No. 606, which specified that the unused rate adjustment authority available to the Postal Service in any one rate case is the lesser of two percentage points or the sum of all unused rate adjustment authority from the previous five years.[14] The Commission agreed, recognizing that in situations where the sum of unused rate adjustment authority is negative, ''it appears that rule 3010.28 is in conflict with rule 3010.27 and 39 U.S.C. 3622(d)(2)(C)(iii)(III).'' [15] The Commission stated that it would initiate a rulemaking to resolve the apparent conflict.

Additional issues arose in Docket No. R2013–1, further indicating the need for clarification of part 3010. Perhaps the most notable of these involved the calculation of the percentage change in rates for particular Standard Mail products. Order No. 1541 at 36 and 45–46. In addition, the Postal Service continued to use projections rather than historical data for certain billing determinants. *Id.* at 17. The Postal Service's incorporation of promotional prices into the calculation of the percentage change in rates led to commenter requests that promotional pricing rules be evaluated in a separate docket.[16] One commenter also

[2] Docket No. R2008–1, United States Postal Service Notice of Market-Dominant Price Adjustment, February 11, 2008, at 2–5; Docket No. R2009–2, United States Postal Service Notice of Market Dominant Price Adjustment, February 10, 2009, at 2–6. The rules have also been relevant and discussed when the Postal Service proposed discounted rates for summer and winter sales programs. *See, e.g.,* Docket No. R2009–3, Order Approving Standard Mail Volume Incentive Pricing Program, June 4, 2009 at 9–10; Docket No. R2009–4, Order Approving Price Adjustment for Standard Mail High Density Flats, July 1, 2009, at 6–9; Docket No. R2009–5, Order Approving First-Class Mail Incentive Pricing Program, September 16, 2009, at 9; Docket No. R2010–3, Order Approving Standard Mail Volume Incentive Pricing Program, April 7, 2010, at 12–13. Similarly, the effect of a temporary price decrease adjustment for mail with a certain two-dimensional barcode was implemented without a price cap calculation. Docket No. R2011–5, Order Approving Market Dominant Price Adjustment, May 17, 2011.

[3] Letter from R. Andrew German, Managing Counsel, Pricing & Product Development, United States Postal Service, to Shoshana Grove Regarding Available CPI–U Authority, October 6, 2010.

[4] Letter from the Commission's General Counsel in Response to Andrew German, October 12, 2010 (General Counsel's Letter).

[5] Response of the Affordable Mail Alliance to October 6 Letter—Petition of the United States Postal Service; October 12 Letter—Ruling of the Office of General Counsel, October 13, 2010 (AMA Response). The letter also expresses procedural concerns with the issuance of the General Counsel's Letter, arguing that it should not be treated as a definitive or binding ruling of the Commission. *Id.* at 5–8.

[6] Docket No. R2011–1, United States Postal Service Notice of Market Dominant Price Adjustment, November 2, 2010.

[7] Chairman's Information Request No. 1, November 10, 2010 (CHIR No. 1).

[8] Response of the United States Postal Service to Questions 1–3 of Chairman's Information Request No. 1, November 16, 2010, at 2.

[9] Docket No. R2011–1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules (Order No. 606), December 10, 2010 at 6–19.

[10] Petition for Rulemaking Regarding the Calculation of Unused Rate Adjustment Authority, November 10, 2010, Docket No. RM2011–2 (Petition for Rulemaking).

[11] Docket No. R2011–1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010 (Order No. 606) at 5.

[12] Docket No. R2012–3, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes (Order No. 987), November 22, 2011.

[13] Docket No. R2013–1, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes (Order No. 1541), November 16, 2012, at 49 n.66.

[14] United States Postal Service Response to Order No. 1541, November 26, 2012, at 3–4 n.10.

[15] Docket No. R2013–1, Order on Standard Mail Rate Adjustments and Related Mail Classification Changes (Order No. 1573), December 11, 2012 at 5.

[16] *See* Comment of Pitney Bowes Inc., November 1, 2012 at 8; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment, November 1, 2012, at 8; and Public Representative Comments in Response to United States Postal Service Notice of Market Dominant Price Adjustments, November 1, 2012, at 6. The Commission found that ''the Postal

Continued

contended that comments concerning the Postal Service's compliance with Commission orders were not appropriate, arguing that a determination of compliance with past orders cannot be made in a rate adjustment case.[17]

The Commission also discussed difficulties in determining whether some pricing structures were workshare discounts subject to the requirements of 39 U.S.C. 3622(e) based on data provided by the Postal Service. Order No. 1541 at 48, 60–61. Docket No. R2013–1 also pointed to the need to revise Commission rules to improve cost calculations. For instance, the Commission acknowledged, in response to a comment concerning the use of older methodologies to calculate cost avoidance for workshare discounts, that ''the Commission's rules may need to be revised to ensure that the most up to date methodologies are incorporated in price adjustment filings.'' *Id.* at 11.

III. Proposed Rules

The proposed rules included in this notice of proposed rulemaking reflect the Commission's efforts (1) to clarify the method for calculating the maximum rate adjustment authority available to the Postal Service in any given rate case; (2) to address issues with 39 CFR part 3010 that arose in Docket No. R2013–1; and (3) to address an additional area for improvement identified by the Commission.

A. Clarification of Calculation of Maximum Rate Adjustment Authority

The majority of the proposed changes to the existing rules are intended to clarify how to determine the maximum rate adjustment that can be made in any one rate case. That determination requires a calculation of the annual limitation for the rate case and a calculation of the unused rate adjustment authority available for the rate case.

Defined terms. At the outset, the proposed rules contain a set of definitions intended to aid the Postal Service and postal customers in understanding terms that are used in part 3010. These changes are not merely stylistic. The inconsistent use of terms has played no small part in the confusion about the proper interpretation of part 3010 by the mailing community.[18] The new definitions explain the meaning of commonly used terms, and the proposed rules include conforming changes to ensure that those terms are used consistently. For instance, existing part 3010 variously uses the terms ''rate adjustment,'' 39 CFR 3010.4(a), ''rate changes,'' 39 CFR 3010.7(b), and ''rate increases.'' 39 CFR 3010.11. The proposed rules consistently use the term ''rate adjustment,'' mirroring the language of 39 U.S.C. 3622(d). Similarly, the existing rules use ''annual limitation,'' 39 CFR 3010.2(a), ''applicable change in CPI–U,'' 39 CFR 3010.3(a), and ''inflation-based limitation.'' 39 CFR 3010.6(b). The proposed rules use the term ''annual limitation'' throughout.

The proposed rules replace the term ''price cap,'' with the term ''maximum rate adjustment.'' The existing rules use the terms ''limitation on rate increase'' and ''price cap'' interchangeably, which leads to confusion. Existing rule 3010.11 is a useful example. The heading purports to describe a ''limit on size of rate increases.'' Paragraph (a) of existing rule 3010.11 states that ''rate increases for each class of market dominant products in any 12-month period are limited.'' But paragraph (d) of that same existing rule states that ''In any 12-month period the inflation-based limitation combined with the allowable recapture of unused rate authority equals the price cap applicable to each class of mail.'' It is unclear whether the price cap referred to in paragraph (d) is the same as the ''rate increase'' limited under paragraph (a) and described in the heading (and, for that matter, the heading of subpart C of part 3010). Although previous orders have used the term ''price cap,'' for purposes of the Commission's rules, the term ''maximum rate adjustment'' is both clearer and more consistent with 39 U.S.C. 3622(d).

In the proposed rules, the inflation-based limitation on rate adjustments under 39 U.S.C. 3622(d)(1)(A) is referred to as the ''annual limitation.'' Unused rate adjustment authority, as defined in 39 U.S.C. 3622(d)(2)(C)(i), is also called ''unused rate adjustment authority'' in the proposed rules. The total limit on the amount of a rate adjustment that can be made for a class in any one rate case includes both the ''annual limitation'' and the ''unused rate adjustment authority,'' and is called the ''maximum rate adjustment.''

Calculation of annual limitation. The Commission proposes amendments to rules 3010.21 and 3010.22 in response to confusion in Docket No. R2011–2 concerning the appropriate method for calculating the annual limitation when rate cases are more than 12 months apart. *Supra;* Order No. 606 at 6–19. Depending on the length of time that has elapsed between rate cases, the annual limitation will be either a full year limitation or a partial year limitation. Proposed rule 3010.21 clarifies that when notices of rate adjustment are 12 or more months apart, as was the case in Docket No. R2011–2, a full year limitation is calculated in accordance with 39 CFR 3010.21. This full year limitation is calculated using only the most recent 12 monthly CPI–U values, regardless of whether more than 12 months have elapsed since the last rate case. Proposed rule 3010.22 clarifies that when notices of rate adjustment are less than 12 months apart, a partial year limitation is calculated in accordance with 39 CFR 3010.22. In addition, both proposed rules contain provisions regarding the source of CPI–U data, taken from existing rule 3010.12, a change intended to assist postal customers and the Postal Service in identifying the correct source of data for the calculation of the annual limitation.

Calculation of unused rate adjustment authority. Confusion concerning the calculation of unused rate adjustment authority in cases where notices of rate adjustments were 12 or more months apart also surfaced in Docket No. R2011–2. Although the annual limitation in such a case takes into account only CPI–U data from the previous 12 months, unused rate adjustment authority accrues over the entire period between notices of rate adjustments. Proposed rule 3010.26 seeks to clarify the manner in which unused rate adjustment authority is calculated, both in cases where notices of rate adjustments are 12 months or less apart and in cases where notices of rate adjustments are more than 12 months apart. Annual unused rate adjustment authority is calculated in both cases. However, in a case where notices of rate adjustment are filed more than 12 months apart, interim unused rate adjustment authority is also calculated. In such a case, annual unused rate adjustment authority is generated during the 12-month period ending on the date the second notice of rate adjustment is filed. Interim unused rate adjustment authority is generated during the period beginning on the date the first notice of rate adjustment is filed

Services price cap treatment of promotions is permissible so long as volumes are properly ascribed to the appropriate products.'' Order No. 1541 at 18.

[17] Comments of the Association for Postal Commerce, October 31, 2012, at 3.

[18] *See, e.g.,* AMA Response at 11–13, conflating the annual limitation calculated under 39 CFR 3010.21 and 3010.22 with the unused rate adjustment authority calculated under 39 CFR 3010.26.

and ending on the day before the date that is 12 months before the date on which the second notice of rate adjustment is filed. The proposed rule also specifies that interim rate adjustment authority may be used in the same case in which it is generated and that all unused rate adjustment authority lapses 5 years after the filing of the notice of rate adjustment leading to its calculation.

Organization. To improve the organization of part 3010, the proposed rules move sections 3010.11 and 3010.12 from subpart B (which is largely concerned with general procedural requirements) to subpart C (which is a more detailed set of requirements for calculating the maximum rate adjustment). This change is designed to assist postal customers and the Postal Service in understanding how the maximum rate adjustment is calculated.

Calculation of maximum unused rate adjustment authority. Proposed rule 3010.28 brings the Commission's rules concerning the use of unused rate adjustment authority in line with the requirements of 39 U.S.C. 3622(d)(2)(C)(iii)(IV). As discussed above, the Commission's rules did not anticipate extended periods of declining CPI–U. Proposed rule 3010.28 specifies that the maximum unused rate adjustment authority that may be used in a Type 1–A, Type 1–B, or Type 2 rate adjustment is 2 percentage points. This is true even in situations where the sum of all 5 years of available unused rate adjustment authority is less than 2 percentage points.

Exhaustion of annual limitation. Finally, the proposed rules include a change to 39 CFR 3010.25 to specify that unused rate adjustment authority may only be used after the entire annual limitation is exhausted. This change is consistent with past Commission practice.

B. Changes Addressing Issues in Docket No. R2013–1

Several of the proposed rules reflect the Commission's efforts to address issues that arose during Docket No. R2013–1. Those proposed rules are discussed in this section.

Calculation of percentage change in rates for products. In Docket No. R2013–1, the Postal Service used different methods to calculate the percentage change in rates for Standard Mail Flats and the percentage change in rates for the Standard Mail class as a whole. Order No. 1541 at 36, 46. The sum of the rate adjustments for all products within the Standard Mail class, as calculated by the Postal Service, exceeded the actual rate adjustment requested by the Postal Service for the class. *Id.* at 46 n.61. The Commission explained, ''While the Commission rules do not specifically address the method to calculate a percentage change in rates by product, the Postal Service should use the same methodology as prescribed for a market dominant class of mail when calculating a percentage change for a market dominant product.'' *Id.* at 46. Proposed rule 3010.23(b) seeks to restate that Commission directive in the Commission's rules.

Adjustments to billing determinants. The Commission has repeatedly emphasized that, for purposes of calculating a percentage change in rates, adjustments to billing determinants should not be based on anticipated changes in mailer behavior. Order No. 1541 at 17, 37; Order No. 606 at 19. This position is consistent with the existing rule 3010.23(d), which requires that ''[w]henever possible, adjustments shall be based on known mail characteristics.'' Proposed rule 3010.23(d) expresses more strongly the Commission's preference for using historical data in the calculation of percentage change in rates by prohibiting the use of data based on anticipated changes in mailer behavior.

Temporary promotional rates and incentive programs. Paragraphs (e) and (f) of proposed rule 3010.23 reflect past Postal Service practice concerning the inclusion of temporary promotional rates and incentive programs in the calculation of percentage change in rates. In past rate cases, the Postal Service chose not to include temporary promotional rates and incentive programs in the calculation of percentage change in rates when those rates and programs resulted in overall rate decreases. Order No. 1541 at 18. Proposed rule 3010.23(e) states the Commission's approval of this practice. Proposed rule 3010.23(f) explains how the Commission expects rates to be calculated in cases where the Postal Service chooses to begin to include a temporary promotional rate or incentive program in a calculation of percentage change in rates after previously excluding the rate or program from the calculation pursuant to proposed rule 3010.23(e).

Content of comments. In Docket No. R2013–1, interested persons submitted comments concerning the Postal Service's compliance with orders and directives of the Commission, as well as with statutory provisions other than those contained in subchapter 1 of chapter 36 of title 39, United States Code. *See, e.g.,* Order No. 1541 at 33–34. One interested person objected to the Commission considering such comments. *Id.* at 35. Proposed rule 3010.11(c) clarifies the Commission's position that such comments are appropriately before the Commission in a rate case. *Id.*

Workshare discounts. The Commission has the authority to define workshare discounts. 39 U.S.C. 3622(e). In order to exercise that authority, the Commission requires the Postal Service to include information concerning workshare discounts in notices of rate adjustment. 39 CFR 3010.14. However, in Docket No. R2013–1, the Commission had reason to believe that the Postal Service's determination of what constituted a workshare discount might differ from the Commission's determination. Order No. 1541 at 47–48 and 61. In order to allow the Commission to determine which discounts and surcharges offered by the Postal Service constitute workshare discounts within the meaning of 39 U.S.C. 3622(e), proposed rule 3010.12(c) would require that the Postal Service submit certain supporting information concerning all discounts and surcharges.

Calculation of costs, avoided costs, volumes, and revenues. Proposed rule 3010.12(e) would require the Postal Service to calculate costs, avoided costs, volumes, and revenues using the most recent analytical principles approved by the Commission, rather than the principles used in the most recent Annual Compliance Report. Initially, the Postal Service filed notices of rate adjustments more or less contemporaneously with the Annual Compliance Report. However, in recent years, the Postal Service has filed notices of rate adjustments at other intervals between Annual Compliance Reports. Often, those notices are filed after the Commission has approved changes to the analytical principles used for the most recent Annual Compliance Report. The proposed rule reflects the Commission's position that the Postal Service will be able to make more accurate calculations in notices of rate adjustments if its calculations use the most recent approved analytical principles. *See* Order No. 1541 at 11.

C. Additional Issue

The Commission has identified an additional change that the Commission believes would improve the application of part 3010 to rate cases. The Commission recently conducted proceedings concerning an amended notice of rate adjustment filing in Docket No. R2013–1. In those proceedings, a 7-day period for public comment was sufficient. Proposed rule 3010.13(g) reflects this experience by

providing 7, rather than 10, days for comment in such proceedings.

IV. Comments Requested

Interested persons are invited to provide written comments and suggestions to clarify or improve part 3010 of the Commission's regulations. These comments may address the changes discussed in this order, and they also may suggest additional changes. Comments may include specific language amending part 3010.

Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.* Interested persons are further invited to review the submissions and provide follow-up comments and suggestions within 15 additional days (that is, within 45 days of the publication of this notice in the **Federal Register**).

Emmett Rand Costich is designated the Public Representative to represent the interests of the general public in this docket.

V. Explanation of Proposed Rules

Attached to this Order are proposed rules to clarify and improve the manner in which part 3010 implements statutory directives and policies previously expressed in Commission orders. Following is a section-by-section analysis of the proposed rules.

Proposed rule 3010.1 defines the terms ''annual limitation,'' ''class,'' ''maximum rate adjustment,'' ''Type 1–A rate adjustment,'' ''Type 1–B rate adjustment,'' ''Type 2 rate adjustment,'' ''Type 3 rate adjustment,'' and ''unused rate adjustment authority.''

Proposed rule 3010.2 revises a statutory reference and is revised to ensure consistent use of terms.

Proposed rule 3010.3 is revised to ensure consistent use of terms and to move the requirement that the Postal Service maintain a schedule tracking unused rate adjustment authority to proposed rule 3010.26(f).

Proposed rule 3010.4 is revised to ensure consistent use of terms.

Proposed rule 3010.5 strikes duplicative provisions.

Proposed rule 3010.6 is revised to ensure consistent use of terms.

Proposed rule 3010.7 is revised to ensure consistent use of terms.

Proposed rule 3010.8(d) strikes an obsolete transition requirement.

Proposed rule 3010.8 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.10 is revised to ensure consistent use of terms.

Existing rules 3010.11 and 3010.12 are stricken. The content of these rules is included in proposed rules 3010.20, 3010.21, and 3010.22.

Proposed rule 3010.11(c) clarifies that comments on compliance with relevant statutory provisions and Commission orders and directives are permitted.

Proposed rule 3010.11(g) changes the comment period from 10 days to 7 days and provides that comments on amended notices may address subjects described in paragraph (c).

Proposed rule 3010.11 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.12 is revised by amending paragraph (b)(5) and adding a paragraph (e) to require that cost, avoided cost, volume, and revenue figures be developed from the most recent approved analytical principles. Proposed rule 3010.12(c) is revised to require the filing of information concerning all new discounts and surcharges.

Proposed rule 3010.12 is revised to ensure consistent use of terms and to strike paragraph headings.

Proposed rule 3010.20 is revised to incorporate provisions from existing rule 3010.11 and to ensure the consistent use of terms.

Proposed rule 3010.21 is revised to specify that it applies to rate adjustments filed 12 or more months apart, to incorporate provisions from existing rule 3010.12, and to ensure the consistent use of terms.

Proposed rule 3010.22 is revised to specify that it applies to rate adjustments filed less than 12 months apart, to incorporate provisions from existing rule 3010.12, and to ensure the consistent use of terms.

Proposed rule 3010.23(b) is revised to specify that the percentage change in rates for a product is calculated in the same manner as for a class.

Proposed rule 3010.23(d) is revised to specify that adjustments to billing determinants may not be based on anticipated changes in mailer behavior.

Proposed rule 3010.23(e) allows the exclusion of temporary promotional rates and incentive programs from percentage change in rates calculations if they result in overall rate decreases.

Proposed rule 3010.23(f) clarifies the manner in which the current rate for a rate cell is calculated.

Proposed rule 3010.23 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.24 is revised to specify that it applies to calculations under proposed rule 3010.23.

Proposed rule 3010.25 is revised to clarify that unused rate adjustment authority may only be applied after applying the annual limitation.

Proposed rule 3010.26 is revised clarify the manner in which unused rate adjustment authority is calculated.

Proposed rule 3010.27 is revised to ensure the consistent use of terms.

Proposed rule 3010.28 is revised to conform with 39 U.S.C. 3622(d)(2)(C)(iii)(IV) and to ensure the consistent use of terms.

Existing rule 3010.29 is stricken as an obsolete transition provision.

Proposed rule 3010.42 is revised to use consistent formatting and to ensure the consistent use of terms.

Proposed rule 3010.43 is revised to specify that both a plan and a report are required and that the net financial position of the Postal Service should be reported.

Proposed rule 3010.44 is revised to ensure consistent use of terms.

The heading of subpart E is revised to ensure consistent use of terms.

Proposed rule 3010.60 is revised to ensure terms are consistent with 39 U.S.C. 3622(d) and to ensure consistent use of terms.

Proposed rule 3010.61 is revised to ensure terms are consistent with 39 U.S.C. 3622(d) and to ensure consistent use of terms.

Proposed rule 3010.63 is revised to be consistent with proposed rule 3010.14(d) and to ensure the consistent use of terms.

Proposed rule 3010.65 is revised to ensure the consistent use of terms.

Proposed rule 3010.66 is revised to ensure the consistent use of terms.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2011–2 is closed.

2. Docket No. RM2013–2 is established for the purpose of receiving comments with respect to the proposed rules attached to this notice.

3. Interested persons may submit comments no later than 30 days after the date of publication of this proposed rulemaking in the **Federal Register**.

4. Reply comments may be filed no later than 45 days after the date of publication of this proposed rulemaking in the **Federal Register**.

5. Emmett Rand Costich is designated the Public Representative to represent the interests of the general public in this docket.

6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

List of Subjects in 39 CFR Part 3010

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

For the reasons stated above, the Postal Regulatory Commission proposes to amend 39 CFR chapter III as follows:

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

■ 1. Revise part 3010 to read as follows:

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)

Subpart C—Rules for Determining the Maximum Rate Adjustment

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

Authority: 39 U.S.C. 503; 3622.

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

§ 3010.1 Definitions.

In this subpart,

(a) *Annual limitation* means:

(1) in the case of a notice of a Type 1–A or Type 1–B rate adjustment filed 12 or more months after the last Type 1–A or Type 1–B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3010.21; and

(2) in the case of a notice of a Type 1–A or Type 1–B rate adjustment filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3010.22.

(b) *Class* means a class of market dominant products.

(c) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1–A or Type 1–B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(d) *Type 1–A rate adjustment* means a rate adjustment described in § 3010.4.

(e) *Type 1–B rate adjustment* means a rate adjustment described in § 3010.5.

(f) *Type 2 rate adjustment* means a rate adjustment described in § 3010.6.

(g) *Type 3 rate adjustment* means a rate adjustment described in § 3010.7.

(h) *Unused rate adjustment authority* means the percentage calculated pursuant to § 3010.26.

§ 3010.2 Applicability.

The rules in this part implement provisions in subchapter I of chapter 36 of title 39, United States Code, establishing ratesetting policies and procedures for market dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

§ 3010.3 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1–A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1–B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b) The Postal Service may combine Type 1–A, Type 1–B, and Type 2 rate adjustments for purposes of filing with the Commission.

§ 3010.4 Type 1–A rate adjustment—in general.

(a) A Type 1–A rate adjustment is a rate adjustment based on the annual limitation.

(b) A Type 1–A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1–A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment for that class, subject to the expiration terms in § 3010.26(e).

§ 3010.5 Type 1–B rate adjustment—in general.

A Type 1–B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part.

§ 3010.6 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.7 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not

implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.8 Schedule for regular and predictable rate adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, *http://www.prc.gov*.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1–A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required for variations involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)

§ 3010.10 Procedures.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1–A or Type 1–B rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

§ 3010.11 Proceedings for Type 1–A and Type 1–B rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1–A or Type 1–B rate adjustment filing, promptly publish notice of the filing in the **Federal Register**, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter 1:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(b) are at or below the annual limitation calculated under § 3010.21 or § 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(b) are at or below the limitations established in § 3010.28.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, and the limitations set forth in § 3010.28 and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment should address the subjects identified in paragraph (b) and may address the subjects identified in paragraph (c).

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(k) A Commission finding that a planned Type 1–A or Type 1–B rate adjustment is in compliance with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable; the limitations set forth in § 3010.28; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1–A or Type 1–B rate adjustment does not contravene other policies of subchapter 1 of title 39 of the U.S. Code is provisional and subject to subsequent review.

§ 3010.12 Contents of notice of rate adjustment.

(a) A Type 1–A or Type 1–B notice of rate adjustment must include the following information:

(1) A schedule of the planned rates;

(2) The planned effective date(s) of the planned rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by:

(1) The annual limitation calculated as required by § 3010.21 or § 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown, and all input values including all relevant CPI–U values are listed with citations to the original sources;

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown;

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources;

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment;

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown, and all input values are listed with citations to the original sources;

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs;

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c);

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629;

(9) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments; and

(10) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new discount or surcharge, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount or surcharge;

(2) All data, economic analyses, and other information relied on to justify the discount or surcharge; and

(3) In the case of a discount, a certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3010.27. All calculations are to be shown, including citations to the original sources.

(e) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

Subpart C—Rules for Determining the Maximum Rate Adjustment

§ 3010.20 Calculation of maximum rate adjustment.

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(b) Rates of general applicability are subject to an inflation-based annual limitation computed using CPI–U values as detailed in § 3010.21(a) and § 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) for a Type 1–A notice of rate adjustment, the annual limitation for the class; and

(2) for a combined Type 1–A and Type 1–B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3010.28.

§ 3010.21 Calculation of annual limitation when notices of rate adjustment are 12 or more months apart.

(a) The monthly CPI–U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is ''CUUR0000SA0.''

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed 12 or more months after the last Type 1–A or Type 1–B notice of rate adjustment applicable to a class, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI–U index is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows:

Full Year Limitation = (Recent Average/Base Average) − 1.

[74 FR 49327, Sept. 28, 2009]

§ 3010.22 Calculation of annual limitation when notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI–U values needed for the calculation of the partial year

limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is ''CUUR0000SA0.''

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment applicable to a class, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows:

Partial Year Limitation = (Recent Average/Previous Recent Average) − 1.

§ 3010.23 Calculation of percentage change in rates.

(a) In this section, the term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(b) For each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate, as defined in paragraph (f) of this section, for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^{N} (R_{i,n})(V_i)}{\sum_{i=1}^{N} (R_{i,c})(V_i)} \right) - 1$$

Where

N = number of rate cells in the class
i = denotes a rate cell (i = 1, 2, ..., N)
Ri,n = planned rate of rate cell i
Ri,c = current rate of rate cell i
Vi = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. Adjustments to billing determinants may not be based on anticipated changes in mailer behavior. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(e) *Temporary promotional rates and incentive programs.* The Postal Service may exclude temporary promotional rates and incentive programs from its percentage change in rates calculations if the temporary promotional rates and incentive programs result in overall rate decreases.

(f) *Current rate.* For purposes of this section, the current rate for a rate cell is the rate that corresponds to the billing determinants described in paragraph (d) for the rate cell. For rate cells that include a temporary promotional rate or incentive program that was previously excluded under paragraph (e), the current rate is the generally applicable rate for the rate cell at the time of the filing of the notice of rate adjustment, not the temporary promotional rate or incentive program rate in effect for the rate cell at such time.

§ 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage change in rates under § 3010.23 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (*e.g.,* because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3010.21 or § 3010.22.

§ 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1–A and Type 1–B rate adjustments. When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b). When notices of Type 1–A or Type 1–B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment calculated under paragraph (b) plus the interim unused rate adjustment authority calculated under paragraph (c)(2), less any interim unused rate adjustment authority used in accordance with paragraph (d).

(b) When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 and the actual percentage change in rates for the class.

(c)(1) When notices of Type 1–A or Type 1–B rate adjustments are filed more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the

day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to § 3010.21(a)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to § 3010.21(a)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the second of two notices of rate adjustment filed more than 12 months apart.

(e) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

§ 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

§ 3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Unused rate adjustment authority used to make a Type 1–B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Procedures.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum:

(a) A copy of the negotiated service agreement;

(b) The planned effective date(s) of the planned rates;

(c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and

(d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; and

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(A) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(B) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(C) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail

preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the **Federal Register**, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as *exigent requests*.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate adjustments requested, relate to those circumstances;

(4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in § 3010.61(a).

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate increases requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3010.28.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

§ 3010.64 Expeditious treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request in the **Federal Register**, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority to which the proceeding is to be conducted;

(3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A specified period for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in § 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3001.9, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate increase;

(2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.

[FR Doc. 2013–08805 Filed 4–15–13; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2013–0104; FRL–9802–5]

Designation of Areas for Air Quality Planning Purposes; State of Nevada; Total Suspended Particulate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete certain area designations for total suspended particulate within the State of Nevada because the designations are no longer necessary. These designations relate to the attainment or unclassifiable areas for total suspended particulate in Clark County as well as the following nonattainment areas for total suspended particulate elsewhere within the State of Nevada: Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area. EPA is proposing this action under the Clean Air Act.

DATES: Written comments must be received on or before May 16, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0104, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: oconnor.karina@epa.gov.*

3. *Mail or deliver:* Karina O'Connor (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, EPA Region IX, (775) 434–8176, *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal relates to deletions of certain area designations for total suspended particulate (TSP) in the State of Nevada. Specifically, EPA proposes to delete the attainment or unclassifiable areas for total suspended particulate in Clark County as well as the following nonattainment areas for total suspended particulate elsewhere within the State of Nevada: Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area. EPA is proposing this action under section 107(d)(4)(B) of the Clean Air Act based on the Agency's determination that the TSP designations for these areas are no longer necessary.

In the Rules and Regulations section of this **Federal Register**, EPA is deleting these area designations in a direct final rule without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. A detailed rationale for the deletions is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** to notify the public that the direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, please see the direct final rule of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Dated: April 1, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–08840 Filed 4–15–13; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1184

RIN 3137–AA22

Implementing the Freedom of Information Act

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement IMLS's regulations under the Freedom of Information Act (FOIA). The regulations both describe how IMLS processes requests for records under FOIA and reaffirm the agency's commitment to providing the fullest possible disclosure of records to the

public. The agency is implementing the regulations to replace its existing joint regulations as part of the National Foundation on the Arts and the Humanities, and to update, clarify, and streamline the language of several procedural provisions, while incorporating changes brought about by amendments to the FOIA.

DATES: Comments are invited and must be received by no later than May 16, 2013.

ADDRESSES: Address all comments concerning this proposed rule to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: *nweiss@imls.gov*. Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: *nweiss@imls.gov*. Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION: IMLS operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the institute.

This proposed rule implements IMLS' FOIA regulations in Subchapter E (45 CFR part 1184), replacing the existing regulations in Subchapter A (45 CFR part 1100) with regard to IMLS. The proposed rule provides additional detail concerning several provisions of the Freedom of Information Act, and is intended to increase understanding of IMLS' FOIA policies. IMLS is authorized to propose these regulations under 5 U.S.C. 552.

I. Why We're Publishing This Rule and What It Does

The Institute of Museum and Library Services (IMLS) is proposing regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. FOIA requires Federal agencies to make official documents and other records available to the public upon request, unless the material requested falls under one of several statutorily prescribed exemptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making such records available. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines). These proposed regulations describe the ways in which records may be requested by the public, and explain how IMLS will respond to such requests and assess fees in connection with the agency's response.

The proposed regulations also incorporate the policies expressed in the President's January 21, 2009, Executive Memorandum on the Freedom of Information Act, and the Attorney General's March 19, 2009, Memorandum for Heads of Executive Departments and Agencies. These policies, however, do not create any legally enforceable rights.

By implementing the provisions of the January 21, 2009, Executive Memorandum and Attorney General Holder's March 19, 2009, Memorandum to the Heads of Executive Departments and Agencies, these regulations will improve IMLS's FOIA-related service and performance, thereby strengthening the agency's compliance with the law. Accordingly, IMLS proposes these regulations implementing FOIA and submits them for public comment pursuant to 5 U.S.C. 552(a)(4)(A), (a)(6)(B)(iv), (a)(6)(D), (a)(6)(E), and 5 U.S.C. 553.

II. Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Paperwork Reduction Act

IMLS has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these regulations do not contain any information collection requirements subject to approval by OMB.

Civil Justice Reform (Executive Order 12988)

These regulations meet the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Federalism (Executive Order 13132)

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, IMLS has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

IMLS, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities because they pertain to administrative matters affecting the agency.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not major regulations as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. They will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

National Environmental Policy Act of 1969

IMLS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Takings (E.O. 21630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This proposed rule will not have a significant effect on the nation's energy supply, distribution, or use.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 45 CFR Part 1184

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, IMLS proposes to amend 45 CFR Subchapter E to add part 1184 as follows:

PART 1184—IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

Sec.

Authority: 5 U.S.C. 552.

§ 1184.1 What is the purpose and scope of these regulations?

These regulations describe how the Institute of Museum and Library Services (IMLS) processes requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The regulations apply only to records that are both:

(a) Created or obtained by IMLS; and

(b) Under the agency's control at the time of the FOIA request.

These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Act Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (the ''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under part 1182 of 45 CFR as well as under this part.

§ 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Non-exempt records available to the public.* Except for records exempt or excluded from disclosure by 5 U.S.C. 552 or published in the **Federal Register** under 5 U.S.C. 552(a)(1), IMLS records subject to the FOIA are available to any person who requests them in accordance with these regulations.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its Web site in accordance with 5 U.S.C. 552(a)(2), as amended, and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save time and money, IMLS strongly urges you to review documents available at the IMLS FOIA Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, all of the terms defined in the Freedom of Information Act, and the OMB Guidelines apply, unless otherwise defined in this part.

(1) *Commercial use request.* A request by or on behalf of anyone who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation.

(2) *Direct costs.* Those expenses that IMLS actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16.1 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication.* The making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(5) *Non-commercial scientific institution.* An institution that is not operated on a ''commercial'' basis, as defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of news media.* Any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information

that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, IMLS will also consider a requester's past publication record in making this determination.

(7) *Review.* The examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a business information submitter under § 1184.8 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search.* The process of looking for and retrieving records or information responsive to a FOIA request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(9) *Working day.* A regular Federal working day. It does not include Saturdays, Sundays, or legal Federal holidays.

§ 1184.3 How do I request records?

(a) *Where to send a request.* You may make a FOIA request for IMLS records by writing directly to the FOIA Officer, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Requests may also be sent by facsimile to the FOIA Officer at (202) 653–4625 or by email to *foia@imls.gov*. You may also submit your FOIA request online through the IMLS FOIA Request Form located at: *http://www.imls.gov/about/foia_request_form.aspx*.

(b) *Form of request.* Your FOIA request need not be in any particular format, but it must be in writing, include your name and mailing address, and be clearly identified as a Freedom of Information Act or ''FOIA'' request. You must describe the records sought with sufficient specificity to enable the agency to identify and locate the records, including, if possible, dates, subjects, titles, or authors of the records requested. If IMLS determines that your request does not reasonably describe the requested records, the agency will advise you what additional information is required to perfect your request, or why your request is otherwise insufficient. You should also indicate if you have a preferred form or format in which you would like to receive the requested records.

(c) *Electronic format records.* IMLS will provide the responsive records in the form or format you request if the records are readily reproducible by IMLS in that form or format. IMLS will make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. IMLS may disclose records in electronic format if the records can be downloaded or transferred intact through electronic media currently in use by the agency. In responding to a request for records, IMLS will make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s).

(d) *Date of receipt.* IMLS considers a request that complies with paragraphs (a) and (b) of this section to be a perfected request. The agency considers a request to be received on the date that the request is perfected.

§ 1184.4 When will I receive a response to my request?

(a) *Responses within 20 working days.* IMLS will ordinarily grant, partially grant, or deny your request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in ''unusual circumstances''.* (1) Where the time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, the FOIA Officer will notify you as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten (10) working days. (2) Where the extension is for more than ten (10) working days, the FOIA Officer will provide you with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an agreed upon alternative time period for processing the request or a modified request.

§ 1184.5 How will my request be processed?

(a) *Acknowledgment of requests.* IMLS will assign a tracking number to your request and will advise you in writing of this tracking number.

(b) *Grants of requests.* If IMLS decides to grant your request in whole or in part, the agency will notify you in writing. The notice will include any applicable fee and the agency will disclose records to you promptly upon payment of applicable fees. IMLS will mark or annotate any records disclosed in part to show the amount, the location, and the FOIA exemptions under which the redaction is made, unless doing so would harm an interest protected by an applicable exemption.

(c) *Denials of requests.* Denials of your FOIA request, either whole or in part, will be made in writing by the FOIA Officer. IMLS will inform you of the reasons for the denial, including any FOIA exemption(s) applied by the agency in denying the request, and notify you of your right to appeal the determination as described in § 1184.6.

§ 1184.6 How can I appeal a denial of my request?

(a) *Submission of an appeal.* If your FOIA request has been denied in whole or in part, you may file an appeal no later than thirty (30) calendar days following the date of the notification of denial. Your appeal must include a description of the initial request, the reason for the appeal, and why you believe the agency's response was incorrect. Your appeal must be in writing, signed, and filed with the IMLS Director, c/o Office of the General Counsel, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Appeals may also be sent by facsimile to (202) 653–4625.

(b) *Decisions on appeal.* The Director of IMLS will make a determination with respect to your appeal within twenty (20) working days after the agency has received the appeal, except as provided in § 1184.4(b). If the decision on appeal is favorable to you, the Director of IMLS will take action to assure prompt dispatch of the records to you. If the decision on appeal is adverse to you, in whole or in part, you will be informed by the Director of IMLS of the reasons for the decision and of the provisions for judicial review set forth in the FOIA.

§ 1184.7 How will fees be charged?

(a) *In general.* IMLS will use the most efficient and least costly methods to

comply with FOIA requests. IMLS will charge fees to recover all allowable direct costs incurred, and may charge fees for searching for and reviewing requested records even if the records are determined to be exempt from disclosure or cannot be located. IMLS will charge fees in accordance with the category of the FOIA requester.

(1) *Commercial use requests.* IMLS will assess charges to recover the full direct cost of searching for, reviewing and duplicating the requested records. IMLS may recover the cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* IMLS will charge for duplication costs.

(3) *Requests by representatives of the news media.* IMLS will charge for duplication costs.

(4) *All other requests.* IMLS will assess charges to recover the full direct cost for searching for and duplicating the requested records.

(5) *Status of Requester.* IMLS' decision regarding the categorization of a requester will be made on a case-by-case basis based upon the requester's intended use of the requested records.

(b) *General fee schedule.* The following fees will be charged in accordance with paragraph (a) of this section.

(1) *Manual search fee.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(2) *Computer search fee.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(3) *Review fee.* The fee charged will equal the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the review.

(4) *Duplication fee.* Copies of records photocopied on an 8½ x 11 inch sheet of paper will be provided at $.10 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.*

(1) Except for records provided in response to a commercial use request, the first 100 pages of duplication and the first two (2) hours of search time will be provided at no charge.

(2) Fees will not be charged to any requester, including commercial use requesters, if the total amount calculated under this section is less than $25.

(d) *Fees likely to exceed $25.* If the total fee charges are likely to exceed $25, IMLS will notify you of the estimated amount of the charges, unless you have indicated in advance that you are willing to pay higher fees and will offer you an opportunity to confer with the FOIA Public Liaison to revise the request to meet your needs at a lower cost.

(e) *Waiver or reduction of fees.*

(1) IMLS will disclose records without charge or at a reduced charge if the agency determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) IMLS will use the following factors to determine whether a fee will be waived or reduced:

(i) *The subject of the request.* Whether the subject of the requested records concerns the ''operations or activities of the government'';

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to ''public understanding'';

(iv) *The significance of the contribution to public understanding.* Whether disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest.* Whether you have a commercial interest that would be furthered by the disclosure; and if so

(vi) *The primary interest in disclosure.* Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the your commercial interest.

(f) *Assessment and collection of fees.*

(1) If you fail to pay your bill within thirty (30) days, interest will accrue from the date the bill was mailed, and will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If IMLS reasonably believes that you are attempting to divide a request into a series of requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) *Advance payment.* Advance payment of fees will generally not be required. IMLS may request an advance payment of the fee, however, if: (i) The charges are likely to exceed $250; or (ii) you have failed previously to pay a fee in a timely fashion. When IMLS requests an advance payment, the time limits described in section (a)(6) of the FOIA will begin only after IMLS has received full payment.

(g) *Failure to comply.* In the absence of unusual or exceptional circumstances, IMLS will not assess fees if the agency fails to comply with any time limit set forth in these regulations.

(h) *Waivers.* IMLS may waive fees in other circumstances solely at its discretion, consistent with 5 U.S.C. 552.

§ 1184.8 What are IMLS' policies regarding disclosure of business information?

(a) *In general.* Business information obtained by IMLS from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Business information.* Commercial or financial information obtained by IMLS from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter.* Any person or entity from whom IMLS obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* When required under paragraph (e) of this section, subject to the exceptions in paragraph (h) of this section, IMLS will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the

notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* IMLS will give notice to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) IMLS has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* IMLS will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement to IMLS. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by IMLS until after the agency's disclosure decision has been made will not be considered by IMLS. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* IMLS will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. If IMLS decides to disclose business information over the objection of a submitter, IMLS will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) IMLS determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, IMLS will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of business information, IMLS will promptly notify the submitter of the filing of the lawsuit.

(j) *Corresponding notice to requesters.* If IMLS provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, IMLS will also notify the requester(s). If IMLS notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, IMLS will also notify the requester(s). If a submitter files a lawsuit seeking to prevent the disclosure of business information, IMLS will notify the requester(s) of the filing of the lawsuit.

§ 1184.9 Disclaimer.

Nothing in these regulations will be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under FOIA.

Signed: April 9, 2013.

Nancy E. Weiss,

General Counsel.

[FR Doc. 2013–08890 Filed 4–15–13; 8:45 am]

BILLING CODE 7036–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R2–ES–2012–0064; FWS–R2–ES–2013–0027; 4500030113]

RIN 1018–AX74; RIN 1018–AZ49

Endangered and Threatened Wildlife and Plants; Listing as Endangered and Threatened and Designation of Critical Habitat for Texas Golden Gladecress and Neches River Rose-Mallow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 11, 2012, proposed endangered status for the Texas golden gladecress and threatened status for the Neches River rose-mallow under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of comment on the September 11, 2012, proposed designation of critical habitat for these species and the availability of a draft economic analysis of the proposed designation of critical habitat for both species as well as an amended required determinations section in the proposed rule. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before May 16, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public informational session and public hearing: We will hold a public hearing on this proposed rule in Nacogdoches, Texas, on May 1, 2013, from 7 p.m. to 8:30 p.m. (see **ADDRESSES**), preceded by a public informational session beginning at 5:30 p.m.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and draft economic analysis on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064 and Docket No. FWS–R2–ES–2013–0027, respectively. You may also request by mail from the Corpus Christi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the listing proposal to Docket No. FWS–R2–ES–2012–0064, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R2–ES–2013–0027. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or

hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0064; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public informational session and public hearing: The public informational session and hearing (see **DATES**) will be held in the Kennedy Auditorium at Stephen F. Austin State University, 1906 Alumni Drive S., Nacogdoches, Texas. People needing reasonable accommodation in order to attend and participate in the public hearing should contact Field Supervisor, Corpus Christi Ecological Services Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas, 78412–5837, by telephone 361–994–9005 or by facsimile 361–994–8262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are reopening the comment period for our proposed listing determination and proposed critical habitat designation for the Texas golden gladecress (*Leavenworthia texana*) and Neches River rose-mallow (*Hibiscus dasycalyx*) that published in the **Federal Register** on September 11, 2012 (77 FR 55968). We are specifically seeking comments on the draft economic analysis, which is now available, for the critical habitat designation; see **ADDRESSES.**

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for these two East Texas plants. The final listing rule will publish under the existing docket number, FWS–R2–ES–2012–0064, and the final critical habitat designation will publish under docket number FWS–R2–ES–2013–0027.

We request that you provide comments specifically on our listing determination under the existing docket number FWS–R2–ES–2012–0064. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of either species.

(3) Any information on the biological or ecological requirements of these species and ongoing conservation measures for the species and their habitats.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

We request that you provide comments specifically on the critical habitat determination and draft economic analysis under docket number FWS–R2–ES–2013–0027. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the gladecress or the rose-mallow from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of the gladecress and the rose-mallow and their habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and the possible impacts of these designations or activities on both species and their proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat.

(9) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate.

(11) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(12) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 55968) during the initial comment period from September 11, 2012, to November 13, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule

or draft economic analysis by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064 (for the proposed listing rule) and Docket No. FWS–R2–ES–2013–0027 (for the proposed critical habitat designation and draft economic analysis), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Corpus Christi, Texas, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule at Docket Number FWS–R2–ES–2012–0064 and the draft economic analysis at Docket Number FWS–R2–ES–2013–0027 on the Internet at *http://www.regulations.gov* or by mail from the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

For more information on previous Federal actions concerning the gladecress and rose-mallow, refer to the proposed determination and designation of critical habitat published in the **Federal Register** on September 11, 2012 (77 FR 55968), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2012–0064) or from the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On September 11, 2012, we published a proposed rule to list the gladecress as endangered and designate critical habitat and to list the rose-mallow as threatened and designate critical habitat (77 FR 55968). In that same rule, for the gladecress, we proposed to designate approximately 1,353 acres (ac) (548 hectares (ha)) of critical habitat in 4 units located in Sabine and San Augustine Counties, Texas, as critical habitat. For the rose-mallow, we proposed to designate approximately 167 ac (67 ha) of critical habitat in 11 units located in Trinity, Houston, Cherokee, Nacogdoches, and Harrison Counties, Texas, as critical habitat. The September 11, 2012 listing and critical habitat proposal had a 60–day comment period, ending November 13, 2012. We will publish in the **Federal Register** a final listing and critical habitat designation for gladecress and rose-mallow on or before September 11, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the gladecress and the rose-mallow, the benefits of critical habitat include public awareness of the presence of either species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for gladecress and rose-mallow due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the draft economic analysis is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the gladecress and the rose-mallow. The draft economic analysis separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the gladecress and the rose-mallow (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the draft economic analysis, but economic impacts associated with these measures are not quantified. Economic

impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework of the Analysis,'' of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the gladecress and the rose-mallow over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The draft economic analysis quantifies economic impacts of gladecress and rose-mallow conservation efforts associated with the following categories of activity, if such activities are Federally assisted or carried out: (1) Routine transportation projects, utility related activities, and oil and gas development; (2) land management; and (3) water management.

We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species for the rose-mallow, and as such the economic analysis forecasts few incremental economic impacts as a result of administrative costs due to the designation of critical habitat for this species. A number of factors limit the extent to which the proposed critical habitat designation will result in incremental costs, including the fact that all the proposed habit is occupied by the species, the species' survival is so closely linked to the quality of their habitat, few actions being carried out in the area are subject to a Federal nexus, and a portion of the proposed habitat is currently managed for conservation. The total incremental costs of efforts resulting from section 7 consultations on the rose-mallow are approximately $29,000 in present value terms and $2,500 on an annualized basis, (assuming a seven percent discount rate over 20 years). Section 7 consultation costs for the rose-mallow are limited to administrative cost.

The designation of critical habitat for the gladecress may result in direct incremental impacts beyond the additional administrative costs of considering adverse modification in a section 7 consultation because: (1) Only in cases where the plant can be found will proposed projects affecting the habitat also affect the plant; and (2) modifications to projects in designated critical habitat may be undertaken due to the critical habitat designation.

The total projected incremental costs of efforts resulting from section 7 consultations on the gladecress is approximately $478,000 in present value terms and $42,700 on an annualized basis (assuming a seven percent discount rate over a 20-year period). Total incremental cost associated with administrative effort is approximately $116,000 and the total project modification costs are estimated to be $362,000 in present value terms (assuming a seven percent discount rate over a 20-year period). The analysis estimates potential future impacts based on the historical rate of consultation on co-occurring listed species in areas proposed for critical habitat as discussed in Chapter 2 of the draft economic analysis.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our September 11, 2012, proposed rule (77 FR 55968), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the draft economic analysis data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these

small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the gladecress or the rose-mallow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as: (1) Routine transportation projects, utility projects and associated activities, and oil and gas development, including interstate pipelines; (2) land management; and (3) water management. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the gladecress or the rose-mallow is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the gladecress and the rose-mallow. For the Neches River rose-mallow, we do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy to the species, and as such the economic analysis forecasts few incremental economic impacts as a result of the designation of critical habitat for this species. Those incremental impacts forecasted are solely related to administrative costs for adverse modification analyses in section 7 consultations. We anticipate conducting approximately 3 formal and 13 informal consultations, considering the designation, for a total of 16 consultations over the next 20 years. For the Texas golden gladecress, we anticipate incremental conservation actions related to administrative and project modification. We anticipate conducting approximately 23 potential section 7 consultations, 3 formal and 20 informal consultations, over the next 20 years.

We assume that these consultations have an equal probability of occurring at any time during the study's timeframe. These estimates are also considered conservative because we assume that all projects occur independently; that is, we assume separate consultations for each project. Based on the consultation history, most consultations are unlikely to involve a third party. Electric cooperatives may be considered independently owned and operated establishments that are not dominant in their field, thus falling under protection of the RFA. As calculated in this analysis, however, the costs to these entities are *de minimis* and would not be expected to have significant impact. Consequently, no small entities are anticipated to incur costs as a result of the designation of critical habitat for Texas golden gladecress and Neches River rose-mallow. Please refer to the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We have attempted to address indirectly impacted entities, as well as directly impacted entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation for either species would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Corpus Christi, Texas, Ecological Services Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 8, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–08848 Filed 4–15–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 73
Tuesday, April 16, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 10, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by May 16, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation Review.

OMB Control Number: 0575–0093.

Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and Section 502 of the Housing Act of 1949, requires the Rural Housing Service (RHS), to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans are not meant to be extended beyond a borrower's need for subsidized rates of non-market terms. The notes, security instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terns. If the borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Need and Use of the Information: The information submitted by RHS borrowers to Agency offices is used to graduate direct borrowers to private credit with or without the use of Agency loan guarantees. At minimum, the financial information must include a balance sheet and an income statement. Other financial data collected will include information such as income, farm operating expenses, asset values, and liabilities.

Description of Respondents: Farms; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 210.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 430.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–08852 Filed 4–15–13; 8:45 am]

BILLING CODE 3410–XV–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: American Community Survey.

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1PR, ACS–1PR(SP), ACS CATI(HU), ACS CAPI(HU), ACS Internet (HU), ACS–1(GQ), ACS–1(GQ)(PR).

Type of Request: Revision of a currently approved collection.

Burden Hours: 2,455,868.

Number of Respondents: 3,760,000.

Average Hours per Response: 40 minutes for the average household questionnaire.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) for revisions to the American Community Survey (ACS). The Census Bureau has developed a methodology to collect and update demographic, social, economic, and housing data every year that are essentially the same as the ''long-form'' data that the Census Bureau traditionally has collected once a decade as part of the decennial census. Federal and state government agencies use such data to evaluate and manage federal programs and to distribute funding for various programs that include food stamp benefits, transportation dollars, and housing grants. State, county, and community governments, nonprofit organizations, businesses, and the general public use information like housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decision-making and program evaluation.

In years past, the Census Bureau collected the long-form data only once every ten years and it became out of date over the course of the decade. To provide more timely data, the Census Bureau developed the ACS. The ACS blends the strength of small area estimation with the high quality of current surveys. There is an increasing need for current data describing lower geographic detail. The ACS is now the

only source of data available for small-area levels across the Nation and in Puerto Rico. In addition, there is an increased interest in obtaining data for small subpopulations such as groups within the Hispanic, Asian, and American Indian populations, the elderly, and children. The ACS provides current data throughout the decade for small areas and subpopulations.

Using the Master Address File (MAF) from the decennial census, which is updated each year, we select a sample of addresses and mail survey materials each month to a new group of potential households. Most households are asked first to complete the survey via the Internet, with a paper questionnaire provided to those households that do not respond via Internet. We then attempt to conduct interviews over the telephone with households that have not responded either by mail or Internet. Upon completion of the telephone follow-up, we select a sub-sample of the remaining households that have not responded either by mail, Internet, or telephone and designate the household for a personal interview. Typically, for personal interviews, we sample at a rate of one in three. We also conduct interviews with a sample of residents at a selected group quarters (GQ) facilities. Collecting these data from a new sample of housing units (HUs) and GQ facilities every month provides more timely data and lessens respondent burden in the Decennial Census.

The goals of the ACS are to:

- Provide federal, state, and local governments an information base for the administration and evaluation of government programs; and
- Provide data users with timely demographic, housing, social, and economic data updated every year that can be compared across states, communities, and population groups.

The content of the proposed 2014 ACS questionnaire and data collection instruments for both housing unit and group quarters operations reflect changes to content and instructions that were proposed in 2012. A two-part question on Health Insurance Premiums and Subsidies will be added. The race question will be modified to remove the term ''Negro'' from the ''Black, African Am., or Negro'' response category. Additional response categories will be added for housing units classified as ''other vacant'' to provide information that is more precise. Finally, the Number of Times Married question will be removed.

Affected Public: Individuals or households.

Frequency: Response to the ACS is on a one-time basis.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

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: April 11, 2013

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08876 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2013]

Foreign-Trade Zone (FTZ) 225—Springfield, Missouri; Notification of Proposed Production Activity; General Dynamics Ordnance and Tactical Systems Munitions Services (Demilitarization of Munitions); Carthage, Missouri

The City of Springfield Airport Board, grantee of FTZ 225, submitted a notification of proposed production activity to the FTZ Board on behalf of General Dynamics Ordnance and Tactical Systems Munitions Services (GDOTS), located in Carthage, Missouri. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 3, 2013.

A separate application for a usage-driven site at the GDOTS facility was submitted and will be processed under Section 400.38 of the Board's regulations. The facility is used for the demilitarization of munitions and other explosive components. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could allow GDOTS to conduct demilitarization activity on imported articles at the facility. Upon completion of the demilitarization, GDOTS would make customs entry on the following: waste, parings and scrap of polymers and ethylene; articles of plastic; waste and scrap of cast iron, stainless steel, other alloy steel, tinned iron or steel, copper, nickel, aluminum, lead, zinc, tin and tungsten; other waste and scrap; remelting scrap ingots; other articles of iron or steel; and, munitions (duty rate duty-free to 5.3%) for the foreign articles noted below.

The articles sourced from abroad include: bombs, grenades, torpedoes, mines, missiles and other munitions and ammunition (duty-free).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 28, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

April 8, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–08897 Filed 4–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Special Priorities Assistance

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 17, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collected from defense contractors and suppliers on Form BIS–999, Request for Special Priorities Assistance, is required for the enforcement and administration of special priorities assistance under the Defense Production Act, the Selective Service Act and the Defense Priorities and Allocation System regulation.

Although the DPAS is designed to be largely self-executing, agency assistance may be needed to resolve certain problems. Such problems include assistance in obtaining timely deliveries of items needed to satisfy defense requirements, locating a supplier, resolving production or delivery conflicts between multiple rated orders, verifying the urgency and determining the validity of rated orders, or authorizing the use of the DPAS authority on contracts or purchase orders to obtain items not automatically included under the DPAS. SPA can be provided for any reason in support of the DPAS.

Use of Form BIS–999 serves to structure the information concerning DPAS problems so that it can be presented in writing to the appropriate agency and official for assistance and resolution.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0057.

Form Number(s): BIS–999.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 10, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08824 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 9, 2012, the Department of Commerce (''Department'') published the preliminary results of the 2010–2011 administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is September 1, 2010, through August 31, 2011. This review covers one exporter: Hangzhou Zhongce Rubber Co., Ltd. (''Zhongce'').

We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made certain changes to our margin calculations for Zhongce. The final dumping margin for this review is listed in the ''Final Results Margin'' section below.

DATES: *Effective Date:* April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987 and (202) 482–0414, respectively.

Background

On October 9, 2012, the Department published its *Preliminary Results* of the antidumping duty administrative review of OTR tires from the PRC. Zhongce submitted publicly available information regarding surrogate values on November 7, 2012. Petitioner and Zhongce submitted case briefs on November 19, 2012, and rebuttal briefs on December 3, 2012.

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only. A full description of the scope of the order is contained in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, titled, ''Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2010–2011 Administrative Review of the Antidumping Duty Order,'' dated April 9, 2013 (''Issues and Decision Memorandum''). The written product description of the scope of the order is dispositive.[2]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Antidumping Duty Administrative Review; 2010–2011,* 77 FR 61387 (October 9, 2012) (''*Preliminary Results*'').

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008).

review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and 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''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Rescission, in Part, of the Administrative Review

In the *Preliminary Results,* the Department stated its intent to rescind the review with respect to 78 companies that are part of the PRC-wide entity, and for which a review request was withdrawn.[3] The Department did not receive any comments from interested parties with respect to rescinding the review for these companies. As such, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to these 78 companies.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[4]

In the *Preliminary Results,* we found that Zhongce demonstrated its eligibility for separate-rate status.[5] No party has placed any evidence on the record of this review to contradict that finding. Therefore, we continue to find that Zhongce is eligible for separate-rate status.

Changes Since the Preliminary Results

Based on an analysis of the comments received, for the final results, the Department made the following change to Zhongce's margin calculation:

- *Surrogate Financial Ratios:* We have used the 2011 financial statements for Hwa Fong Rubber (Thailand) Public Company Limited and the 2010 financial statements for Goodyear (Thailand) Public Company Limited to calculate average surrogate financial ratios.[6]
- *Carbon Black:* We have used the Thai import data for ''Rubber Grade Carbon Black'' to value all carbon black inputs.[7]

Final Results

We determine that the following weighted-average dumping margin exists for the period September 1, 2010, through August 31, 2011:

OTR TIRES FROM THE PRC

Exporter	Weighted-average margin percent
Hangzhou Zhongce Rubber Co., Ltd.	112.41

Assessment Rates

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. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific (or customer) per unit duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total sales quantity of those same sales.[8] In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Zhongce, the cash deposit rate will be the margin listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 210.48 percent determined in the less-than-fair-value investigation; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or

[3] *See Preliminary Results,* 77 FR at 61387 and 61389, Appendix III.

[4] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994); *see also* 19 CFR 351.107(d).

[5] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 7.

[6] *See* Memorandum to the File from Andrew Medley, titled ''Final Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum,'' dated April 9, 2013 (''Surrogate Value Memorandum''), and Memorandum to the File from Andrew Medley, titled ''2010–2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Zhongce,'' dated April 9, 2013 (''Zhongce Final Analysis Memorandum''); *see also* Issues and Decision Memorandum at Comment 6.

[7] *See* Surrogate Value Memorandum and Zhongce Final Analysis Memorandum; *see also* Issues and Decision Memorandum at Comment 5A.

[8] In these final results, 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).

destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Whether to Apply Facts Available to Zhongce's Labor Hours
Comment 2: Whether to Apply Facts Available to Zhongce's Factory Overhead
Comment 3: Whether to Deduct VAT from Export Price
Comment 4: Selection of the Primary Surrogate Country
Comment 5: Selection of Surrogate Values for Certain Material Inputs
A. Carbon Black
B. Bead Wire
C. Nylon Tire Cord
D. Natural Rubber
E. Gap-filling with Data from Another Country
Comment 6: Selection of Surrogate Financial Statements

[FR Doc. 2013–08894 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–3693, respectively.

Background:

On November 5, 2012, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico covering the period November 1, 2011, through October 31, 2012.[1] The Department received a timely request for an antidumping duty administrative review from the petitioners (*i.e.,* Cerro Flow Products, LLC; Wieland Copper Products, LLC; Mueller Copper Tube Products, Inc.; and Mueller Copper Tube Company, Inc.) for the following companies: 1) GD Affiliates S. de R.L. de C.V. (Golden Dragon); 2) IUSA, S.A. de C.V. (IUSA); 3) Luvata Juarez S. de R.L. de C.V. (Luvata Juarez); 4) Luvata Monterrey S. de R.L. de C.V. (Luvata Monterrey); and 5) Nacional de Cobre, S.A. de C.V. (Nacobre). The Department also received timely requests for an antidumping duty administrative review from the following interested parties as defined by section 771(9)(A) of the Tariff Act of 1930, as amended (the Act): (1) Golden Dragon; (2) Luvata Monterrey; and (3) Nacobre. On December 31, 2012, the Department published a notice of initiation of administrative review with respect to these companies.[2] On January 14, 2013, the petitioners withdrew their request for an administrative review for IUSA, Luvata Juarez, and Luvata Monterrey. On March 5, 2013, Luvata Monterrey withdrew its own request for an administrative review.

Rescission, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners' and Luvata Monterrey's requests were submitted within the 90-day period and, thus, are timely. Since these withdrawals of request for an antidumping duty administrative review are timely and because no other party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to IUSA, Luvata Juarez, and Luvata Monterrey. We note that we are continuing the administrative review with respect to Golden Dragon and Nacobre.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: April 9, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–08901 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 66437 (Nov. 5, 2012).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 77017 (Dec. 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Request for Stakeholder Comments on Doing Business in Africa Campaign

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The International Trade Administration (ITA) of the U.S. Department of Commerce seeks comments on key stakeholder priorities to be considered in the development and implementation of an initiative to increase U.S. exports to and commercial ties with Africa, the Doing Business in Africa campaign (DBIA campaign), to be led by the Department of Commerce in coordination with the Trade Promotion Coordinating Committee (TPCC). The DBIA campaign was announced on November 28, 2012, in Johannesburg, South Africa, and will advance the goals of the ''U.S. Strategy Toward Sub-Saharan Africa,'' (Strategy) issued by President Barack Obama June 14, 2012. ITA, in coordination with the TPCC, will consider the information received in response to this notice in developing the DBIA campaign.

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: Electronic comments are preferred and may be sent to: *DBIAComment@trade.gov.* Written comments may be sent to: Michael Masserman, 1401 Constitution Avenue NW., Suite 31027, International Trade Administration, Washington, DC 20230. Comments should include a reference to this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Michael Masserman, Executive Director for Export Policy, Promotion and Strategy, 1401 Constitution Avenue NW., Suite 31027, International Trade Administration, Washington, DC 20230, *DBIAcomment@trade.gov,* (202) 482–5455.

SUPPLEMENTARY INFORMATION: The Strategy sets out the goal of encouraging U.S. companies to trade with and invest in sub-Saharan Africa, including through the development of a Doing Business in Africa campaign, which will also help advance the President's National Export Initiative. The Doing Business in Africa campaign will harness the resources of the Federal Government to assist U.S. businesses in identifying and seizing opportunities in sub-Saharan Africa and will engage with members of the sub-Saharan African Diaspora in the United States.

Federal agencies will work to encourage U.S. companies—with a focus on small- and medium-sized businesses and African Diaspora-owned businesses—to trade with and invest in Africa through: (1) Targeted partnerships to promote trade with sub-Saharan Africa, including the planned launch later this year of an Africa Global Business Summit Series which will allow U.S. companies to hear directly from U.S. Ambassadors and Senior Commercial Officers about opportunities in the region; (2) Expanded trade promotion programs tailored toward Africa, including targeted trade missions to sub-Saharan countries and enhanced International Buyer Program (IBP) events to bring more African buyer delegations to the United States; (3) Providing enhanced Africa-focused export counseling to U.S. businesses as a result of enhanced training of federal trade specialists who work with businesses across the United States every day on the specific challenges and opportunities in Africa; and (4) The development of a dedicated online Africa Business Portal which will direct U.S. businesses to the federal resources they need to succeed in African markets and presenting export and other commercial opportunities in sub-Saharan Africa.

The Obama Administration has recognized that financing assistance is vital to increasing trade and commercial ties with sub-Saharan Africa. As part of the DBIA campaign, agencies including the Overseas Private Investment Corporation (OPIC), Export-Import Bank (Ex-Im Bank), and U.S. Trade and Development Agency (USTDA) will build upon current efforts, specifically by: (1) Opening the U.S.-Africa Clean Energy Development and Finance Center in Johannesburg, South Africa in 2013 to provide the U.S. private sector, as well as sub-Saharan African developers, with a centralized means to identify and access U.S. government support for clean energy export and investment needs; (2) Advancing the recently announced U.S.-Africa Clean Energy Finance (ACEF) Initiative, a $20 million collaborative financing mechanism developed by the State Department, OPIC, and USTDA to increase support for U.S. businesses and exporters in sub-Saharan Africa's clean energy sector; and (3) Enhancing Ex-Im Bank initiatives, including the Ex-Im Bank's efforts to advance the South African government's South African Renewable Initiative through assistance in financing up to $2 billion in U.S. technologies, products and services to strengthen South Africa's energy sector.

The International Trade Administration is seeking comments on the following topics to aid in further structuring the Doing Business in Africa campaign, which will be led by the Department of Commerce in coordination with the TPCC:

(1) How can the Federal Government help U.S. businesses both identify and seize upon trade and investment opportunities in sub-Saharan Africa?

a. What metric(s) should be used to measure progress?

(2) How can the Federal Government partner with nonprofit organizations, industry associations, local and state governments, and other organizations to help U.S. businesses both identify and seize upon trade and investment opportunities in sub-Saharan Africa?

a. In the short term?

b. Over the next five years?

(3) How can the Federal Government encourage small- and medium-sized businesses and African Diaspora-owned businesses to trade with and invest in sub-Saharan Africa?

(4) If you have experience doing business in Africa, how would you characterize that experience? Did you receive Federal Government assistance, for example from the U.S. & Foreign Commercial Service, and how would you rate that service?

(5) In your experience, what country and sector opportunities should the Federal Government highlight within the African market? If applicable, please provide information on why you have selected these country and sector opportunities for highlighting by the Federal Government.

(6) What information could the Federal Government provide about trade and commercial opportunities in Africa that would be the most helpful, and how would you like to receive or access that information?

(7) What major Africa trade- and/or commerce-focused events does your organization plan to attend or host in 2013?

The U.S. Strategy Toward Sub-Saharan Africa is available at: *http://www.gpo.gov/fdsys/pkg/FR–2012–02–14/pdf/2012–3400.pdf.* More information on the Doing Business in Africa Campaign is available at *http://export.gov/africa/.*

The Department of Commerce anticipates a continuing need for input on the Doing Business in Africa campaign. Please feel free to contact *DBIAcomment@trade.gov* to provide advice and input on the Doing Business in Africa campaign even after the close of the comment period.

Dated: April 10, 2013.

Frank Spector,

Trade Missions Program.

[FR Doc. 2013–08837 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC623

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of Letters of Authorization (LOA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued LOAs to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from April 15, 2013 through July 19, 2013.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the total taking over the five-year period will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for LOAs from W&T Offshore, Inc. (W&T Offshore) and W&T Energy VI, LLC (W&T Energy) for activities covered by EROS regulations.

Reporting

NMFS Galveston Laboratory's Platform Removal Observer Program (PROP) has provided reports for W&T Offshore's removal of offshore structures during 2012. W&T Energy does not have reports for any operations to date. NMFS PROP observers and non-NMFS observers reported the following during W&T Offshore's EROS operations in 2012:

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
W&T Offshore	Eugene Island Area, Block 196, Platform B	March 27 to 30, 2012	Bottlenose dolphins (2)	None.
W&T Offshore	Eugene Island Area, Block 205, Platform D	April 9 to 12, 16 to 17, 23 to 25, 2012.	Spotted dolphins (60)	None.

Pursuant to these regulations, NMFS has issued LOAs to W&T Offshore and W&T Energy. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking over the five-year period (with monitoring, mitigation, and reporting measures) will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS will review reports to ensure that the applicants are in compliance with meeting the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: April 11, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–08857 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB155

Endangered Species; File No. 16549

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the S.O. Conte Anadromous Fish Research Center, U.S. Geological Survey; Box 796, 1 Migratory Way, Turners Falls, MA 01376 [Barnaby Watten: Responsible Party], has been issued a permit [File No. 16549] to take shortnose sturgeon (*Acipenser brevirostrum*) 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, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and
- Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 11, 2012, notice was published in the **Federal Register** (77 FR 21750) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Permit Holder is issued a five-year permit to study shortnose sturgeon in the wild and in captivity, determining up and downstream migrations, habitat use, spawning periodicity, seasonal movements of shortnose sturgeon in the Connecticut River from Agawam, MA to Montague, MA. He will also perform captive animal research in laboratory tests of up- and downstream fish passage studies, swimming performance tests, tagging studies, anesthesiology, behavior, physiology and contaminant studies, as well as producing progeny for further research. Additionally, the Permit Holder will collect fertilized embryo from each of the following rivers: Merrimack River (MA), and the Kennebec and Androscoggin Rivers (ME).

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: April 11, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–08870 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0081]

Request for Information Regarding Third Party Testing for Lead Content, Phthalate Content, and the Solubility of the Eight Elements Listed in ASTM F963–11

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC, or Commission) is issuing a notice seeking information on whether there are materials that can be determined not to include a prohibited element (lead or certain other elements) or chemical (six prohibited phthalates), such that third party testing is not required. The Commission also seeks information on materials that do not, and will not, contain the prohibited elements or chemicals in concentrations above their applicable maximum limit.

DATES: Written comments must be submitted by June 17, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0037 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; 301–504–7562; email: *RButturini@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Consumer Product Safety Act (CPSA) generally requires that children's products be tested by a third party CPSC-accepted laboratory for compliance with the applicable children's product safety rules. The Commission notes, regardless of any third party testing obligation, compliance with the children's products requirements discussed in this Request for Information (RFI) is always required.

This RFI seeks information on whether there are materials, used in the manufacture of consumer products, that can be determined not to include a prohibited element (lead or certain other elements) or chemical (the six prohibited phthalates that are listed in section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA)), such that third party testing is not required. This RFI also seeks information on materials that do not, and will not, contain the prohibited elements or chemicals in concentrations above the legally allowable limit. Information provided by the public concerning the characteristics of such materials will be used to develop recommended courses of action for the Commission.

This RFI consists of four parts, seeking data and information concerning the following children's products and materials used to manufacture those products:

- Toys subject to ASTM F963–11, *Standard Consumer Safety Specification for Toy Safety,* and the presence, if any, or at what levels, of the eight elements designated in section 4.3.5 of the standard. The solubility of each element is limited to no more than the levels listed in Tables 1 and 2 of the standard. Additionally, for accessible

component parts of toys primarily intended for children 12 years old and younger, the lead content must be no greater than 100 parts per million (ppm), and the lead content of paints or surface coatings must be no greater than 90 ppm, in accordance with section 101 of the CPSIA;

- Toys and certain child care articles, and the presence, if any, or at what levels, of the six prohibited phthalates listed in section 108 of the CPSIA. These products are subject to a maximum concentration of 1000 ppm (or 0.1 percent) for each of the six prohibited phthalates;
- Manufactured woods and the presence, if any, or at what levels, of lead. Accessible manufactured wood in children's products is subject to the maximum allowable lead content requirement of 100 ppm;
- Synthetic food dyes and the presence, if any, or at what levels, of lead. Accessible synthetic food dyes in children's products are subject to the maximum allowable lead content requirement of 100 ppm.

II. Background

A. Requirements

The CPSIA made the ASTM International toy safety standard, ASTM F963–11, a mandatory children's product safety standard. ASTM F963–11 includes restrictions on the maximum solubility of eight elements (antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium) in coatings and substrates of toys subject to that standard.

The CPSIA also limits the concentration of six prohibited phthalates in component parts of children's toys and child care articles.

The CPSIA limits the lead content of component parts of children's products to 100 ppm (currently) in each accessible component part. A children's product is a consumer product that is designed and intended primarily for children 12 years old and younger.

B. Third Party Testing

Section 14(a) of the CPSA, as amended by section 102 of the CPSIA, requires third party testing of: children's products for lead content; toys and child care articles for the prohibited phthalates; and toys subject to the ASTM F963–11 toy safety standard for eight elements. For children's products, toys, and child care articles subject to CPSIA requirements, and toys subject to ASTM F963–11 that may contain these prohibited materials, third party testing is required for certification, material change, and periodic testing.

Section 14(a) of the CPSA, as amend by section 102 of the CPSIA, requires third party testing for lead content in certain products and materials. The Commission, however, has determined that certain products or materials inherently do not contain lead at levels that exceed the specified lead content limits, and therefore, no third party testing of these products and materials is required. *See* 16 CFR 1500.91 for a list of the materials.

In addition to making these determinations, the Commission published a rule containing procedures and requirements for future Commission determinations regarding certain materials or products that do not, and would not, exceed the lead limits. 16 CFR 1500.89. Interested parties may consult the determinations rule at 16 CFR 1500.91 and the determinations procedures rule at 16 CFR 1500.89 for additional information about these prior Commission actions.

Section 14 of the CPSA requires third party testing of children's toys and certain child care articles for compliance with the phthalates requirements. In August 2009, the Commission made available a statement of policy on testing with respect to the CPSIA section 108 restrictions for phthalates in component parts of children's toys and child care articles, which can be found at: *http://www.cpsc.gov/PageFiles/110003/componenttestingpolicy.pdf.* In August 2012, in the notice of requirements (NOR), *Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With the Limits on Phthalates in Children's Toys and Child Care Articles,* the Commission included a footnote regarding materials that are not expected inherently to contain phthalates, and thus, do not require third party testing. The NOR can be found at: *http://www.gpo.gov/fdsys/pkg/FR-2011-08-10/pdf/2011-19678.pdf.*

Public Law 112–28 (PL 112–28), enacted on August 11, 2011, amended section 14 of the CPSA and directed the CPSC to consider ways to reduce the third party testing burden consistent with assuring compliance of children's products to the applicable consumer product safety rules. The resulting briefing package, dated August 29, 2012, is available at: *http://www.cpsc.gov/PageFiles/129398/reduce3pt.pdf.* In response to the third party testing burden reduction briefing package, on January 18, 2013, the Commission directed staff to develop an RFI to solicit information on the four topics listed above. The fiscal year 2013 Operating Plan text directing the staff can be found on page 24 at: *http://www.cpsc.gov/Global/Budget/2013OperatingPlan.pdf.*

III. General Information Requested

In preparing comments to submit to CPSC regarding one or more sections of the RFI, commenters should include information on the following:

- The chemicals and raw materials used in manufacturing a specific product or component part, and their typical or possible concentrations of lead, phthalates, or the elements specified in the ASTM F963–11 toy safety standard;
- The extent to which recycled materials or other materials (such as plastic color concentrates or other additives) with potentially variable concentrations of lead, phthalates, or the elements specified in the ASTM F963–11 toy safety standard are used in manufacturing a specific product or component part;
- The manufacturing processes and conditions (such as potential sources of contaminants) that could increase the concentration in the product or material of lead, phthalates, or the elements specified in the ASTM F963–11 toy safety standard;
- The possibility that variations among worldwide manufacturers in their use of raw materials and processes could impact manufacturers' ability to meet consistently the concentration limits for lead, phthalates, or the elements specified in the ASTM F963–11 toy safety standard; and
- Other relevant factors that could impact the concentration in products or materials of lead, phthalates, or the elements specified in the ASTM F963–11 toy safety standard.

In addition to identifying the materials that could be determined to be compliant with an applicable chemical limit without requiring third party testing, commenters should explain in detail why such a conclusion could be made. Commenters should explain their reasons and provide evidence to support their claim that present and future production will continue to comply with the applicable children's product safety rules.

IV. Additional Information Requested

A. Children's Toys and the Eight Elements in ASTM F963–11

Section 4.3.5 of ASTM F963–11 establishes limits on the maximum soluble content of the eight elements in paints, surface coatings, and substrates of toys subject to the standard. (Of these elements, the standard—and the CPSIA—limit the total lead content in

paints and surface coatings to 90 ppm and the total lead content of accessible substrates to 100 ppm.) Some of the ways compliance with the soluble limit could be demonstrated are through:

- Component part testing showing that all of the component parts of the toy have a solubility of one or more of the eight elements of no more than their maximum allowable values; or
- Showing that the component parts' content limit for an element is at or below the maximum solubility limit allowed, which also indicates compliance with that limit. (This alternate route to show compliance is provided for by section 8.3.1 of the ASTM F963–11 standard).

The commenter should explain, in addition to the requested general information, how consistent compliance to the soluble limit of element(s) in a material or component part, can be assured without third party testing.

B. Phthalate Concentrations in Plasticized Component Parts

Section 108 of the CPSIA permanently prohibits the sale of any ''children's toy or child care article'' containing concentrations of more than 0.1 percent of the following chemicals:

- dibutyl phthalate (DBP);
- butyl benzyl phthalate (BBP); or
- di(2-ethylhexyl) phthalate (DEHP).

Section 108 prohibits on an interim basis the sale of ''any children's toy that can be placed in a child's mouth'' or ''child care article'' containing concentrations of more than 0.1 percent of:

- di-n-octyl phthalate (DnOP);
- diisononyl phthalate (DINP); or
- diisodecyl phthalate (DIDP),

pending review by a Chronic Hazard Advisory Panel (CHAP).

Section 108 of the CPSIA defines the terms ''children's toy,'' ''children's toy that can be placed in a child's mouth,'' and ''child care article.'' Additional information is available at: *http://www.cpsc.gov/Regulations-Laws-Standards/CPSIA/Phthalates/Phthalates-Information.*

Phthalates commonly are used as plasticizers (softeners) in plastics. Phthalates also are used in other products, including, but not limited to, paints, inks, adhesives, sealants, air fresheners, and scented products. In August 2009, the Commission issued a statement of policy listing materials that:

- May contain phthalates, and therefore, should always be tested; and
- Normally do not contain phthalates, and therefore, may not require testing.

In the August 2012 NOR, a footnote indicated that the following materials are not expected inherently to contain phthalates, and thus, do not require third party testing::

- Untreated/unfinished wood;
- Metal;
- Natural fibers;
- Natural latex; and
- Mineral products.

Staff is interested in information relating to materials that do not contain the prohibited phthalates in amounts greater than 1000 ppm. In addition to the requested general information, the commenter should explain how consistent compliance to the phthalates limits in a material or component part can be assured without third party testing.

C. Lead Content in Manufactured Wood Products

For the purposes of this RFI, ''manufactured wood'' refers to composite wood products that are wood-based materials, such as particle board, medium density fiber board, and plywood, consisting largely of natural, untreated wood and glues, adhesives, waxes, resins, and similar materials. Only these constituents are the subject of the RFI.

The Commission previously determined that natural wood (untreated, unadulterated, and uncoated) does not, and will not, contain lead in concentrations in excess of 100 ppm, as detailed in 16 CFR 1500.91. The Commission has not made a similar determination for the adhesives or other possible constituents of a manufactured wood product.

Manufactured wood products are complex, nonhomogeneous products. Therefore, some of the ways compliance with the lead content limit could be demonstrated are:

- By testing a sample of a finished product, which must contain no more than 100 ppm lead;
- Through component part testing of all the constituents of the manufactured wood, with test results showing that all of the constituents used to make the finished product contain no more than 100 ppm lead; or
- By demonstrating that a finished product will never exceed 100 ppm lead content, even if one or more constituents of the manufactured wood product contains lead in excess of 100 ppm.

As provided in 16 CFR 1500.91, a natural wood component part does not require testing.

The commenter should explain, in addition to the requested general information, how consistent compliance to the lead concentration limit of the finished manufactured wood or the constituents can be assured without third party testing.

D. Synthetic Food Additives

As detailed in 16 CFR 1500.91, the Commission previously determined that natural materials, such as natural fibers and other plant-derived and animal-derived materials, do not contain lead in concentrations above 100 ppm. These natural materials could include substances that may be used as food additives. However, certain synthetic materials that may be used as food additives are not included in the Commission determinations. Therefore, if a synthetic food additive is used in manufacturing a children's product, the resulting finished product or component part is subject to the CPSC requirements for lead content for children's products, including the third party testing requirements.

Substances used as food additives are subject to the requirements of the U.S. Food and Drug Administration (FDA), including 21 CFR part 172. Because 21 CFR part 172 does not require third party testing, compliance with FDA requirements is not sufficient to indicate compliance with section 101 of the CPSIA. To the extent that any synthetic food additive can be shown consistently not to contain lead at levels that exceed the specified lead content limits, recommendations could be made for future Commission action.

The commenter should explain, in addition to the requested general information, how consistent compliance to the lead content limit of the synthetic food additive(s) can be assured without third party testing.

Dated: April 11, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–08858 Filed 4–15–13; 8:45 am]

BILLING CODE 6355–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Privacy Act of 1974: New System of Records

AGENCY: Court Services and Offender Supervision Agency (CSOSA)

ACTION: Notice of a new system of records.

SUMMARY: CSOSA proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, titled ''Kiosk System.'' This action is necessary to meet the requirements of the Privacy Act to publish in the

Federal Register notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). This system allows CSOSA to collect and maintain records on individuals under supervision who pose a very low level of risk to the community and allows those individuals to provide the information needed to fulfill his/her reporting requirement through the use of a self-service technology. This system has been in operation since April 2008 without incident. In the meantime, appropriate measures to ensure confidentiality, integrity and access controls have been maintained.

DATES: Submit written comments on or before May 16, 2013. This new system will be effective May 16, 2013 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit written comments, identified by ''Kiosk System, CSOSA–21'' to Rorey Smith, Deputy General Counsel and Chief Privacy Officer, Office of General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue NW., Room 1380, Washington, DC, 20004, or to *rorey.smith@csosa.gov.*

FOR FURTHER INFORMATION CONTACT: Rorey Smith, (202) 220–5797, Office of General Counsel, Court Services and Offender Supervision Agency, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, CSOSA proposes to establish a new system of records titled, ''Kiosk System.'' This system of records is being established to allow individuals under supervision who pose a very low level of risk to the community to use the self-service technology to provide the information needed to fulfill his/her reporting requirement and to allow the Community Supervision Officer to meet the documented contact and supervision standards. This is the same information that would be confirmed/verified if the individual were meeting with his/her Community Supervision Officer in person.

In accordance with 5 U.S.C. 552a(r), CSOSA has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Kiosk System—CSOSA–21

SYSTEM NAME:

Kiosk System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Kiosk System application and database records are maintained at CSOSA, Office of Information Technology, 633 Indiana Avenue NW., 7th Floor, Washington, DC 20004.

CATERGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the Kiosk System are individuals under supervision who are approved for reporting through the kiosk self-service technology. In addition, there is information on CSOSA staff members who are authorized to access and use the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following records: individual's name; date of birth; Identification Numbers: Police Department Identification (PDID), CSOSA Number, Probationer Identification Number (PIN); date when the offender's supervision expires; addresses and phone numbers (home, employment, school, emergency contact); email addresses; physical description and characteristics (eye color, hair color, ethnicity, race, height, weight; a hand biometric scan; selection to report for the use of illegal substances testing (random selection process); and information on any rearrests.

The system also contains the following records on CSOSA staff members: logon information (username); assigned role/permission level in the kiosk system; individual's name; and CSOSA phone number, email, title, supervisor, and office location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Information maintained in the Kiosk System is collected pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Act), Public Law 105–33, DC Official Code § 24–133. The Act grants CSOSA the authority to supervise District of Columbia individuals on probation, parole, and supervised release.

PURPOSE(S):

The purpose of the Kiosk System is to allow individuals under supervision who pose a very low level of risk to the community to use self-service technology to provide the information needed to fulfill his/her reporting requirement to CSOSA. The information confirmed/provided by the individual through the kiosk self-service technology allows the Community Supervision Officer to complete the required verifications and meet the documented contact and supervision standards.

In addition, the information on the CSOSA staff members is used to verify and validate that appropriate individuals are given access to the kiosk system, and to follow up as needed should there be issues with the accounts, access to the system, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CSOSA is not establishing routine uses for the Kiosk System at this time; however, CSOSA will make other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETREIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities behind a locked door. The records may be stored on magnetic disc, tape, other digital media, and/or on paper.

RETREIVABILITY:

Offenders who are approved to report through the kiosk self-service technology can retrieve their information through the use of the Probationer Identification Number (PIN), in conjunction with the hand biometric scan. This combination allows the offender to properly identify him or herself to the kiosk self-service technology.

CSOSA staff members are able to search and retrieve the information by a number of personal identifiers: last name, first name, date of birth, Police Department Identification (PDID), PIN, or CSOSA Number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with application laws, rules and policies, including federal and all applicable CSOSA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those offenders who are eligible, approved and enrolled for reporting through the kiosk self-service technology and to CSOSA staff members with appropriate clearances or permissions who have a need to know the information or to access to the system for the performance of their official duties.

RETENTION AND DISPOSAL:

The records retention schedule (DAA–0562–2012–0002) has been submitted by CSOSA to the National Archives and Records Administration for review and approval.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue NW., Washington, DC 20004.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

The information in the Kiosk System comes from one of four sources: (1) The individual under supervision; (2) from another CSOSA IT system, when an individual is enrolled for kiosk reporting and specific existing data on the individual is pulled into the system from a staging database/staging tables associated with CSOSA's case management system (this provides the base demographic data needed by staff to properly identify the offender, and provides the initial residence, employment, school and emergency contact information that the offender will review, confirm and maintain via reporting through the kiosk self-service technology); (3) information generated by the Kiosk System; and (4) information entered by CSOSA staff, when the information entered by staff includes the capture of the hand biometric (offender's right hand), verification of the data in the system, disabling an offender from reporting through the kiosk self-service technology (at the end of supervision, or due to non-compliance), and re-enabling and offender to report through the kiosk self-service technology.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 10, 2013.

Rorey Smith,

Office of General Counsel, Court Services and Offender Supervision Agency.

[FR Doc. 2013–08885 Filed 4–15–13; 8:45 am]

BILLING CODE 3129–04–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Privacy Act of 1974: New System of Records

AGENCY: Court Services and Offender Supervision Agency (CSOSA).

ACTION: Notice of a new system of records.

SUMMARY: CSOSA proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, titled ''Biometric Verification System (CSOSA–20).'' This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). The Biometric Verification System allows individuals under supervision to electronically check-in for office visits, programs, and drug lab testing.

DATES: Submit written comments on or before May 16, 2013. This new system will be effective May 16, 2013 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit written comments, identified by ''Biometric Verification System, CSOSA–20'' to Rorey Smith, Deputy General Counsel and Chief Privacy Officer, Office of General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue NW., Room 1380, Washington, DC 20004, or to *rorey.smith@csosa.gov*.

FOR FURTHER INFORMATION CONTACT: Rorey Smith, (202) 220–5797, Office of General Counsel, Court Services and Offender Supervision Agency, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, CSOSA proposes to establish a new system of records titled, ''Biometric Verification System.'' The system provides electronic data necessary for efficient accounting of an individual's participation in required events and allows CSOSA staff members to properly verify the individual's identity at the time of check-in by matching the individual's physical presence with photo and other information retrieved by the system, based on a successful match of the entered PIN and hand biometric. This system mitigates the risks associated with use of a physical sign-in log (e.g., inaccurate accounting for attendance, someone signing in for someone else, etc.) when an individual checks in for an office visit, drug testing, or assigned intervention/assistance program.

In accordance with 5 U.S.C. 552a(r), CSOSA has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Biometric Verification System—CSOSA–20.

SYSTEM NAME:

Biometric Verification System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Biometric Verification System application and database records are maintained at CSOSA, Office of Information Technology, 633 Indiana Avenue NW., 7th Floor, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are those under supervision who are enrolled in the Biometric Verification System for the purpose of checking-in for an office visit, program activity or drug testing. In addition, there is information on CSOSA staff members who are authorized to access and use the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain, but is not limited to: Identification Numbers: Police Department Identification (PDID), CSOSA Number, Probationer Identification Number (PIN); a hand biometric scan; and information generated by the Biometric Verification System at the time of a successful check-in (date, time, location and venue of check-in).

In addition, categories of records on those under supervision that are displayed through (but not stored in) the Biometric Verification System include: individual's name; date of birth; identification numbers: Police Department Identification (PDID), CSOSA Number, Probationer Identification Number (PIN); supervision photo; supervision information (Community Supervision Officer's name, team number and branch)

Categories of records on CSOSA staff members in the Biometric Verification System include: logon information (username); assigned role/permission level in the system; individual's name; and agency phone number, email, title, supervisor, office location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Information maintained in the Biometric Verification System is collected pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Act), Public Law 105–33, DC Official Code § 24–133. The Act grants CSOSA the authority to supervise District of Columbia individuals on probation, parole, and supervised release.

PURPOSE(S):

The Biometric Verification System and use of biometric hand readers at CSOSA allows individuals under CSOSA supervision to electronically ''check-in'' for office visits, programs, and drug lab testing. In addition, the system properly verifies a participant's identity at the time of check-in, thereby reducing the risk of inaccurate accounting of an individual's participation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CSOSA is not establishing routine uses for the Biometric Verification System at this time; however, CSOSA will make other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETREIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities behind a locked door. The records may be stored on magnetic disc, tape, other digital media, and/or on paper.

RETRIEVABILITY:

CSOSA staff members are able to search and retrieve the information by a number of personal identifiers: last name, first name, date of birth, Police Department Identification (PDID), PIN, or CSOSA Number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with application laws, rules and policies, including federal and all applicable CSOSA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those CSOSA staff members with appropriate clearances or permissions who have a need to know the information or the need to access the system for the performance of their official duties. Individuals enrolled in the Biometric Verification System cannot access records through the biometric hand reader technology.

RETENTION AND DISPOSAL:

The records retention schedule (DAA–0562–2012–0002) has been submitted by CSOSA to the National Archives and Records Administration for review and approval.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue NW., Washington, DC 20004.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

The information in the Biometric Verification System comes from one of four sources: (1) Another CSOSA IT system, when an offender is enrolled in or checks-in through the Biometric Verification System; (2) the individual under supervision, when the individual enters his/her PIN and uses his/her right hand for the biometric scan each check-in; (3) generated by the Biometric Verification System, when the system generates verification system generates the Probationer ID (PIN), the date generates the Probationer ID (PIN), the date of check-in, time of check-in, the location of the check-in, and the venue (program attendance, office visit, or drug lab testing; and (4) from information entered by CSOSA staff, to include the capture of the hand biometric (offender's right hand), recapture of the hand biometric when needed, entry of the biometric by-pass (if needed), and assisting with all check-ins by selecting the venue and the hand reader to be used for the check-in.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 10, 2013.

Rorey Smith,

Deputy General Counsel and Chief Privacy Officer, Court Services and Offender Supervision Agency.

[FR Doc. 2013–08884 Filed 4–15–13; 8:45 am]

BILLING CODE 3129–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces the following Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: April 25, 2013, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Lawrence, DFO, Uniform Formulary Beneficiary Advisory Panel, 4130 Stanley Road, Suite 208, Building 1000, San Antonio, TX 78234–6012, Telephone: (210) 295–1271, Fax: (210) 295–2789. Email Address: *Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of TRICARE Management Activity, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Topical Pain Agents
   b. Pulmonary—2 Agents: COPD
   c. Anticoagulants
   d. Designated Newly Approved Drugs in Already-Reviewed Classes
   e. Pertinent Utilization Management Issues
5. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 7:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *https://www.fido.gov/facadatabase/public.asp*.

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel. Due to difficulties beyond the control of the Uniform Formulary Beneficiary Advisory Panel or its Designated Federal Officer, the Panel was unable to file a **Federal Register** notice for the April 25, 2013 meeting of the Uniform Formulary Beneficiary Advisory Panel as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: April 11, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

[FR Doc. 2013–08859 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0077]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Intelligence Agency is proposing to alter a system to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 17, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 16, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 MacDill Blvd., Washington, DC 20340–0001 or by phone at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on April 1, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals, ''dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 1, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

LDIA 0271

SYSTEM NAME:

Investigations and Complaints (June 2, 2010, 75 FR 30791).

CHANGES

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Intelligence Agency,600 MacDill Blvd., Washington, DC 20340–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current and former civilian, military, or contract personnel and members of the public who file a complaint or who are the subject of an investigation conducted by the agency.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), date of birth, place of birth, telephone number and address if applicable along with

documents relating to the organization, planning and execution of audits, inspections, or investigations.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''Information is collected to promote the economy, efficiency and effectiveness of Defense Intelligence Agency programs, functions and operations, and to prevent and detect fraud, waste and abuse. To conduct audits, inspections, investigations, intelligence oversight and workforce assistance.''

* * * * *

[FR Doc. 2013–08895 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–0057]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 17, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 16, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703)767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 20, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

S375.20

SYSTEM NAME:

Employee Relations under Negotiated Grievance Procedures (November 29, 2011; 76 FR 73602).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with ''Defense Logistics Agency Human Resources, Labor and Employee Relations Policy, 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.''

* * * * *

[FR Doc. 2013–08898 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0076]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Intelligence Agency is proposing the alter a system to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 17, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 16, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 MacDill Blvd., Washington, DC 20340–0001 or by phone at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on April 1, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 1, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

LDIA 10–0004

SYSTEM NAME:

Occupational, Safety, Health, and Environmental Management Records (July 2, 2010, 75 FR 38494).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Intelligence Agency, 200

MacDill Boulevard, Washington, DC 20340–0001.''

* * * * *

PURPOSE:

Delete entry and replace with ''This system will manage occupational, safety, health, and environmental management case files. Information is used to comply with accident/incident reporting and/or investigation and to identify and correct known or potential hazards in order to facilitate prevention programs.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Request should contain the individuals' full name, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Request should contain the individual's full name, current address, and telephone number.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C 552a (j)(2), may be exempt pursuant to 5 U.S.C 552 (k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(k)(5) Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information but only to the extent such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C 553 (b)(1),(2), and (3), (c) and (e) and published in 32 CFR part 319.''

[FR Doc. 2013–08899 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0066]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense/Joint Staff, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 17, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 16, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Office of the Secretary of Defense proposes to amend one system in records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 25, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

DFMP 26

SYSTEM NAME:

Vietnamese Commando Compensation Files (November 30, 1998, 63 FR 65760).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''DPR 42.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''This is a closed system—no new records may be added. Individuals who submitted claims for compensation under Public Law 104–201, Sections 657, as amended by Public Law 105–261, 658, payments to certain persons captured or interned by North Vietnam.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''System (including documentation) is comprised of (1) names (including aliases, former names, or other names used); (2) current address; (3) current telephone number(s); (4) United States Social Security Number (SSN), (if any), United States Immigration and Naturalization Service (INS) Identification or similar number(s), (if any), and any equivalent social security or identification number(s), (if any), issued to applicant by the Democratic Republic of Vietnam, the Republic of Vietnam, or the current government of Vietnam; (5) date of birth; (6) place of birth; (7) distinguishing marks

(fingerprints, scars, etc.); (8) family identification, including (a) parents; (b) spouse; (c) children; (d) brothers; (e) sisters; (f) others; (9) team name; (10) place of insertion; (11) date of launch; (12) dates of captivity; (13) name, address, and telephone number of counsel or attorney (if any); and (14) required sworn declaration of veracity of above, including denial of service with or collaboration with North Vietnam.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''Records were used by officials of the Vietnamese Commandos Compensation Commission to (1) verify the identity of claimants; (2) ensure the claim has been submitted in a timely manner (on or before November 15, 1998); (3) adjudicate the claim; (4) establish verified list of claimants for disbursing agency and facilitate cash payments to claimants; (5) provide a check list for attorney's fees limitation (as specified in the law); (6) establish a check list of paid claimants to preclude future claims or judicial review; and (7) prepare reports to the Congress.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by name, date and place of birth, and/or SSN, if assigned and voluntarily furnished.''

SAFEGUARDS:

Delete entry and replace with ''Records are now stored at the Washington National Records Center and are only released upon request. See ''Record Access Procedures'' below.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records will be owned by the DoD and physically maintained at the Washington National Records Center until January 2032 at which time ownership will be transferred to the National Archives and Records Administration.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''OSD Military Compensation Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the office of OSD Military Compensation Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a SSN and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 4800 Mark Center Drive Alexandria, VA 22350–3100.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a SSN and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed. The request must also be signed and include the number of this system of records notice.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information was received from claimants, their survivors, their attorneys and other authorized representatives; third party individuals; the Department of Defense; and Government intelligence agencies; the Immigration and Naturalization Service; and from the National Archives and Records Administration.''

* * * * *

[FR Doc. 2013–08896 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Access to Care Demonstration Project

AGENCY: Department of Defense.

ACTION: Notice of Extension of the TRICARE South Region United States Coast Guard Access to Care Demonstration for TRICARE Prime/TRICARE Prime Remote Beneficiaries.

SUMMARY: This notice is to advise interested parties of a 2-year extension of the demonstration project in which the Department of Defense evaluates allowing United States Coast Guard (USCG) TRICARE Prime/TRICARE Prime Remote to utilize four visits per fiscal year to TRICARE authorized Urgent Care Centers without obtaining an authorization from their Primary Care Manager or an authorized Health Care Finder. The Department will continue to evaluate the costs/benefits and beneficiary satisfaction of providing Prime enrolled USCG Active Duty members and their families quick, hassle free options for obtaining acute/urgent care at a lower cost diverting visits from the more expensive utilization of Emergency Rooms.

DATES: This demonstration project will continue through May 4, 2015.

ADDRESSES: TRICARE Management Activity, Health Plan Operations, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project, please contact Ms. Shane Pham at (703) 681–0039.

Dated: April 11, 2013.

Aaron Siegel,

Alternate OSD ***Federal Register*** *Liaison Officer, Department of Defense.*

[FR Doc. 2013–08856 Filed 4–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Request for Information on Technology and Core Competencies

AGENCY: Department of the Army, DoD.

ACTION: Request for information regarding support to Army Core Competencies.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41Code of the Federal Regulations (CFR 102–3.140 through 160, the Department of the Army requests information on science and technology (S&T) research, operational concepts, and mission support innovations to support Army core competencies. No funds are available for any proposal or information submission and submitting information does not bind the Army for any future contracts/grants resulting from this request for information.

The Army Science Board is requesting information from organizations external to the Army that will help the board complete its analysis and ensure that all viable sources of information are explored. Based on information submitted in response to this request the Army Science Board may invite selected organizations to provide additional information on technologies of interest.

To supplement the information developed in previous studies and otherwise available to the Board, organizations are invited to submit information on technologies to support core competencies that they believe should be considered. Of particular interest are those technologies that support Army core competencies and can be developed externally, either with support from the Army or from other sources.

Specific information requested is: Identification of technology and core competency it supports; Description of the technology, including current maturity and current performers; description of how the technology supports the core competency; and description of why this technology pursuit/capability is best performed by the industrial base or other organization external to the Army, rather than performed internal to the Army.

ADDRESSES: Written submissions are to be submitted to the: Army Science Board, ATTN: Designated Federal Officer, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: For information please contact COL David Trybula at *david.c.trybula.mil@mail.mil.*

SUPPLEMENTARY INFORMATION:

Background. The Terms of Reference (TOR) provided by the Office of the Secretary of the Army directs the Army Science Board (ASB) to undertake a 2013 Summer Study on ''Army Science and Technology (S&T) Essential Core Competencies.''

In accordance with the TOR, this study will analyze the current RDECOM portfolio and S&T projects and objectives; compare them to other U.S. Government laboratories, industrial laboratories, and academic institutions; and provide findings and recommendations, with supporting analytical underpinning. The study has identified the following product areas in which to seek core competencies: Armor/Anti-Armor; Armaments; Ground Vehicles; Aviation; Missiles; Space; C4ISR; Night Vision; Chemical/Biological Warfare; and Soldier Systems.

The study will focus on technologies developed by the RDECOM suborganizations: Army Research Laboratory (including Army Research Office); Armament Research, Development & Engineering Center (ARDEC); Aviation & Missile Research, Development & Engineering Center (AMRDEC); Communications-Electronics Research, Development & Engineering Center (CERDEC); Edgewood Chemical Biological Command (ECBC); Natick Soldier Research, Development & Engineering Center (NSRDEC); and Tank Automotive Research, Development & Engineering Center (TARDEC). (See *www.army.mil/info/organization/unitsandcommands/commandstructure/redecom/for additional information.*)

The ASB is tasked to identify which of these technologies must be developed in-house/on-site, which can be developed externally but must be supported by Army funds, and which will be developed by others without significant Army commitment of resources. Organizations to be considered that are external to the Army include other DoD organizations, other government organizations, international partners, commercial industry, FFRDCs, and universities.

Submission Instructions and Format: To respond to this request for information, interested parties should submit all information detailed below. Packages must be submitted by Friday, May 3, 2013 by 4 p.m. Eastern Standard Time. Submissions should briefly summarize the technologies within a maximum of four pages (as broken down in paragraphs c, d and e below), excluding quad chart, figures, references and the cover page. No proprietary information should be included in responses. Submissions require both a CD and a hard copy of the response. The size of the CD submission will be limited to 20 MB. The hard copy format specifications include 12 point font, single-spaced, single-sided, 8.5 by 11 inches paper, with 1-inch margins.

a. Quad Chart (1 page) The template for this is available upon request.

b. Cover Page (1 page only):
Title
Organization

Respondent's technical and administrative points of contact (names, addresses, phones and fax numbers, and email addresses)

c. Abstract (1 page only): Summarize technology solutions and how they support Army core competencies. Respondents are encouraged to be as succinct as possible while providing sufficient detail to adequately convey the technology solutions.

d. Technology Description (2 pages maximum): Provide an enhanced view of the technology solution you are proposing, focusing on the advantages of the technology and its applicability to the future Army core competencies. The description of each solution should include the current state of development and the predicted performance levels the technology should reasonably achieve. Also provide a summary of current performers. Describe whether this technology must be developed in-house by the Army, developed externally with Army support, or monitored by the Army as others develop the technology.

e. Applicability to Future Army core competency (1 page only): Identify and expound upon how the technology supports an Army core competency, concentrating on the added capability this solution provides that currently does not exist.

Please be as succinct as possible while providing sufficient detail to adequately convey the technical capabilities these solutions have to support the Army core competencies.

All Proposers should review the NATIONAL INDUSTRIAL SECURITY PROGRAM OPERATING MANUAL, (NISPOM), dated February 28, 2006, as it provides baseline standards for the protection of classified information and prescribes the requirements concerning Contractor Developed Information under paragraph 4–105. Defense Security Service (DSS) Site for the NISPOM is: *http://www.dss.mil/isp/fac_clear/download_nispom.html.*

Unclassified white papers/CDs must be mailed to the POC listed (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). Proposers who intend to include classified information or data in their white paper submission or who are unsure about the appropriate classification of their white papers

should contact the POC for guidance and direction in advance of preparation at phone number.

A listing of respondents and whether or not their submission was utilized will be made available for public inspection upon request. Open deliberation by the full committee is anticipated on or about July 18, 2013 in Colorado Springs, CO. This meeting will be preceded by standard **Federal Register** notification.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–08851 Filed 4–15–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

The following are available for licensing: Navy Case No. 100513: METHOD OF FABRICATING A DUAL CRYSTALLINE SILICON SUSPENSION SYSTEM USING PRE–FABRICATED CAVITIES//Navy Case No. 100910: HARVESTING ROTATIONAL ENERGY USING LINEAR–BASED ENERGY HARVESTERS//Navy Case No. 101501: RECONFIGURABLE ACTIVELY SWITCHED FLYING CAPACITOR ARRAY//Navy Case No. 101592: ANALYTICAL RECONSTRUCTION OF DIGITAL SIGNALS VIA STITCHED POLYNOMIAL FITTING//Navy Case No. 101761: APPARATUS AND METHODS FOR TIME DOMAIN MEASUREMENTS OF OSCILLATION PERTURBATIONS USING PHASE SHIFTED VIRTUAL INTERVALS//Navy Case No. 101804: LIGHT FIELD IMAGING ASSISTED INERTIAL MAPPING AND NAVIGATION//Navy Case No. 101875: INERTIAL SENSORS USING SLIDING PLANE ELECTRON TUNNELING PROXIMITY SWITCHES//Navy Case No. 102181: METHOD FOR FABRICATING PROXIMITY SWITCH BY ANGLED DEPOSITION//Navy Case No. 102216: CAPACITIVE PROXIMITY TRIGGER FOR USE IN TIME–DOMAIN MEMS INERTIAL SENSORS.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, email: *brian.suh@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: April 8, 2013

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–08915 Filed 4–15–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Max-Viz, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Max-Viz, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 8023760: System and Method for Enhancing Low-Visibility Imagery//U.S. Patent No. 8149245: Adaptive Linear Contrast Method for Enhancement of Low-Visibility Imagery.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 1, 2013

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, email: *brian.suh@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: April 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–08910 Filed 4–15–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Information on Surplus Land at a Military Installation Designated for Disposal: Naval Air Station Alameda, Alameda, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice provides information on withdrawal of surplus property at Naval Air Station Alameda, Alameda, California.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Duchnak, Director, Naval Facilities Engineering Command, Base Realignment and Closure Program Management Office, 1455 Frazee Road, Suite 900, San Diego, CA 92108–4310, telephone 619–532–0992; or Mr. David H. Hellman, Deputy Director, Base Realignment and Closure Program Management Office, 720 Kennon Street SE., Suite 320, Washington Navy Yard, DC 20374, telephone 202–685–8373.

SUPPLEMENTARY INFORMATION: In 1993, Naval Air Station Alameda located in Alameda, California was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the Act). On March 13, 1995, the Department of the Navy published a Notice in the **Federal Register** (60 FR 13413) that land and facilities at this installation were declared surplus to the needs of the Federal Government. Land and facilities previously reported as surplus are now required by the Federal Government to satisfy Department of Veterans Affairs requirements in the San Francisco Bay Area.

Notice of Surplus Property. Pursuant to paragraph (7)(B) of Section 2905(b) of the Act, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the withdrawal of previously reported surplus property at Naval Air Station Alameda, Alameda, California is provided.

Withdrawn Property Description. The surplus determination for the following land and facilities at Naval Air Station Alameda, Alameda, California, is withdrawn.

a. Land. Approximately 74 acres of improved fee simple land located within Alameda County and the City of Alameda.

b. Buildings. The following is a summary of the buildings and other improvements located on the above-described land that will also be withdrawn.

(1) Operations buildings (2 structures). Comments: Approximately 7,032 square feet.

(2) Storage facilities (7 structures). Comments: Approximately 11,020 square feet. Includes ammunition, general, and hazardous materials storage facilities.

(3) Utility structures (1 structure). Comments: Approximately 100 square feet. Includes a sewage pumping station.

(4) Runway infrastructure. Comments: Approximately 20 acres. Includes Runway 7–25, runway lighting, taxiways.

Dated: April 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–08916 Filed 4–15–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0053]

Agency Information Collection Activities; Comment Request; Program for International Student Assessment (PISA 2015) Recruitment and Field Test

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 17, 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–0053 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 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Program for International Student Assessment (PISA 2015) Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 5,810.

Total Estimated Number of Annual Burden Hours: 6,313.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students science, mathematics, and reading literacy. PISA was first administered in 2000 and is conducted every three years. This submission is for the sixth cycle in the series, PISA 2015, and requests OMB approval for field test and main study recruitment, and field trial data collection. As in 2006, in PISA 2015, science will be the major subject domain. The field test will also include computer-based assessments in reading, mathematics, and collaborative problem solving. In addition to the cognitive assessments described above, PISA 2015 will include questionnaires administered to assessed students, school principals, and teachers. School recruitment for the field test in the U.S. will begin in Fall 2013 with data collection occurring during April-May 2014. The U.S. PISA main study will be conducted from September through November 2015. This submission is for recruitment for the 2014 field test and 2015 main study, conducting the 2014 field test data collection, and to provide a description of the overarching plan for all of the phases of the data collection, including the 2015 main study.

Dated: April 11, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–08920 Filed 4–15–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Training for Realtime Writers Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Training for Realtime Writers Program

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116K.

DATES:

Applications Available: April 16, 2013.

Deadline for Transmittal of Applications: May 31, 2013.

Deadline for Intergovernmental Review: July 30, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The objective of this program is to provide grants to institutions of higher education (IHEs) that meet certain qualifications, to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 713 of the Communications Act of 1934 (47 U.S.C. 613) and the regulations prescribed thereunder.

Priorities: This notice contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 872(a)(3) of the Higher Education Act of 1965, as amended (HEA), 20 USC § 1161s(a)(3). The competitive preference priorities

are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Applicants must: (1) Demonstrate they possess the most substantial capability to increase their capacity to train realtime writers; (2) demonstrate the most promising collaboration with educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or (3) propose the most promising and innovative approaches for initiating or expanding training or job placement assistance efforts with respect to realtime writers.

An eligible entity receiving a grant must use the grant funds for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including: (1) Recruitment; (2) the provision of scholarships (subject to the requirements in section 872(c)(2) of the HEA); (3) distance learning; (4) further developing and implementing both English and Spanish curricula to more effectively train individuals in realtime writing skills, and education in the knowledge necessary for the delivery of high quality closed captioning services; (5) mentoring students to ensure successful completion of the realtime training and providing assistance in job placement; (6) encouraging individuals with disabilities to pursue a career in realtime writing; and (7) the employment and payment of personnel for the purposes described.

Competitive Preference Priorities: We give competitive preference to applications that address the following priorities.

There are three competitive preference priorities: competitive preference priority 1—Improving Productivity; competitive preference priority 2—Enabling More Data-Based Decision-Making; and competitive preference priority 3—Technology.

Under 34 CFR 75.105(c)(2)(i), we award one additional point for each competitive priority that an application meets. The maximum competitive preference points an application can receive under this competition is three.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priority or priorities they are addressing.

These priorities are:

Competitive Preference Priority 1—Improving Productivity (1 additional point).

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified in competitive preference priority 1 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modifications of teacher compensation systems, may not be relevant to this program. Accordingly, applicants that address this priority should respond to this competitive preference priority in a way that improves productivity in a relevant higher education context. The Secretary is particularly interested in projects that improve student outcomes at lower costs.

Applicants addressing this priority should identify the specific outcomes to be measured and demonstrate that they have the ability to collect accurate data on both project costs and desired outcomes. In addition, they should include a discussion of the expected cost-effectiveness of the practice compared with current alternative practices.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (1 additional point).

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success; and

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Competitive Preference Priority 3—Technology (1 additional point).

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Definitions:

These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and they apply to the competitive preference priorities in this notice.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Note: Projects responding to competitive preference priority 3 must incorporate ways to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials. The Department recognizes that some of the examples in the definition of student achievement may not be relevant to the Training for Realtime Writers program. Accordingly, applicants who are writing to competitive preference priority 3 should address paragraph (a)(2) of the definition of ''student achievement,'' which defines the term in reference to alternative measures of student learning, and should address this competitive preference priority in a way that

improves student achievement in a relevant higher education context.

Program Authority: 20 U.S.C. 1161s.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,068,870.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$300,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for the entire grant period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that offers a court reporting program that—(1) Has a curriculum capable of training realtime writers qualified to provide captioning services; (2) is accredited by an accrediting agency or association recognized by the Secretary; and (3) is participating in student aid programs under title IV of the HEA.

2. (a) *Cost Sharing or Matching:* This program does not require cost sharing or matching.

(b) *Supplement-Not-Supplant:* This program includes a supplement-not-supplant requirement. Under section 872(c)(4) of the HEA, grant amounts awarded under this program must supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116K.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Any application addressing the competitive preference priorities must address them in the abstract and the narrative. You must limit the application narrative to no more than 15 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

Note: For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page.

- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, endnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424), and the Department of Education Supplemental Information for the SF 424 Form; the one-page Abstract; Budget Information—Non-Construction Programs (ED 524); or Part IV, the Assurances and Certifications. The page limit also does not apply to a Table of Contents, if you include one. However, the page limit does apply to all of the project narrative section in Part III.

If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 16, 2013.

Deadline for Transmittal of Applications: May 31, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: July 30, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this competition.

5. *Funding Restrictions:* Under section 872(c)(3) of the HEA, a grantee under this program may not use more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Training for Realtime Writers Program, CFDA number 84.116K, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training for Realtime Writers Program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116K).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-

specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frederick Winter, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street NW., Room 6153, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116K),
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116K),
550 12th Street SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those

applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Training for Realtime Writers Program: The number and percentage of participants who have completed the program who are employed as realtime writers.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Frederick Winter, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street NW., Room 6153, Washington, DC 20006–8544. Telephone: (202) 502–7632 or by email: *frederick.winter@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: April 11, 2013.

Debra Saunders-White,

Deputy Assistant Secretary for Higher Education Programs, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–08892 Filed 4–15–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education.

ACTION: Notice of an Open Commission Meeting.

SUMMARY: This notice sets forth the announcement of a public meeting of the President's Advisory Commission on Educational Excellence for Hispanics. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of this meeting.

DATES: Tuesday, April 30, 2013.

Time: 10:00 a.m.–5:00 p.m. Eastern Daylight Time.

ADDRESSES: Great Hall, Hubert H. Humphrey Building, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Marco A. Davis, Acting Executive Director, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W110, Washington, DC 20202; telephone: 202–401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010; reestablished December 21, 2012). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (P.L 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Agenda

The Commission will review initial subcommittee ideas and plans for Commission activities for 2013, and have breakout sessions with the established subcommittees.

Individuals who will need accommodations in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Marco A. Davis, Acting Executive Director, White House Initiative on Educational Excellence for Hispanics at 202–401–1411 no later than noon EDT, Wednesday, April 24, 2013. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals who wish to attend the Commission meetings must RSVP by noon EDT, Wednesday, April 24, 2013, to *WhiteHouseforHispanicEducation@ed.gov*. Members of the public must RSVP by the due date.

An opportunity for public comment is available throughout the day on Tuesday, April 30, 2013, from 10 a.m. to 5 p.m., EDT. Individuals who wish to provide comments will be allowed three minutes to speak. Those members of the public interested in submitting written comments may do so by submitting written comments to the attention of Emmanuel Caudillo, White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 5W215, Washington, DC 20202, by Tuesday, April 23, 2013.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at: *www.ed.gov/fedregister/index.html*. To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC area at 202–512–0000.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2013–08903 Filed 4–15–13; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Procedural Manual for the Election Assistance Commission's Voting System Test Laboratories Program Manual, Version 2.0

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice; publication of Voting System Test Laboratories Program Manual, Version 2.0, for 60 day public comment period on EAC Web site.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing a procedural manual for its Voting System Testing and Certification Program. This manual sets the administrative procedures for becoming an EAC accredited test laboratory and guidelines for VSTL participation in the EAC Testing and Certification Program. The program is mandated by the Help America Vote Act (HAVA) at 42 US.C. 15371.

SUPPLEMENTARY INFORMATION:

Background. HAVA requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards (Section 231(b) of HAVA (42 US.C. 15371(b))). Generally, the EAC considers for accreditation those laboratories evaluated and recommended by the National Institute of Standards and Technology (NIST). The Voting System Test Laboratory Program Manual, published below, sets the procedures for this program.

EAC is required to resubmit the Testing and Certification Manual for renewal in accordance with Paperwork Reduction Act of 1995 requirements. The Testing and Certification Division has updated sections of the manual to reflect proposed changes in certification procedures. These sections are highlighted for ease of review.

Comments. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy.

Comments are also invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. This notice is published in accordance with the Paperwork Reduction Act of 1995, to request comments regarding the burden of responding to the information collection activities of the proposed manual; please refer to the EAC's Web site, www.eac.gov, for further information about the submission of comments regarding burden.

DATES: Submit written or electronic comments on this draft procedural manual on or before 5:00 p.m. EDT on June 17, 2013.

ADDRESSES: Submit comments via email to *VotingSystemGuidelines@eac.gov;* via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1201 New York Avenue, Suite 300, Washington, DC 20005; or via fax to 202–566–1392. An electronic copy of the proposed manual may be found on the EAC's Web site *http://www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director, Voting System Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

Alice Miller,

Chief Operating Officer and Acting Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2013–08832 Filed 4–15–13; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–033]

Green Mountain Power Corporation; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Non-capacity amendment of license.

b. *Project No.:* 2558–033.

c. *Date Filed:* March 29, 2013.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Otter Creek Hydroelectric Project.

f. *Location:* Otter Creek in Addison and Rutland Counties, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Mike Scarzello, Green Mountain Power Corporation, 77 Grove Street, Rutland, VT 05701–3400, (802) 747–5207.

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.Martin@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 9, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. Please include the project number (P–2558–033) on any comments or motions filed.

k. *Description of Application:* Green Mountain Power Corporation is requesting a non-capacity license amendment to realign the intake at the Proctor development. The licensee would also remove inoperable generating equipment from the Proctor powerhouse to facilitate installation of new turbine generator equipment that is proposed under the Project's application for subsequent license currently being processed by the Commission. The proposed intake realignment construction includes demolition of portions of the existing intake, limited removal of bedrock, deepening and widening the intake channel and orienting the opening more directly to river flow.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2558) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 9, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08820 Filed 4–15–13; 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: EG13–25–000.

Applicants: NRG Energy, Inc.

Description: Self-Certification of EG or FC of NRG Energy, Inc for Petra Nova Power I LLC.

Filed Date: 4/4/13.

Accession Number: 20130404–5131.

Comments Due: 5 p.m. ET 4/25/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–817–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 04–08–2013 Resource Adequacy 2013 Comp Filing to be effective 2/27/2013.

Filed Date: 4/8/13.

Accession Number: 20130408–5126.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER13–5–001.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits Compliance Filing of ITC Midwest LLC to be effective 3/11/2013.

Filed Date: 4/9/13.

Accession Number: 20130409–5102.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER13–954–001.
Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation.
Description: 2013 Interchange Agreement Supplement to be effective 1/1/2013.
Filed Date: 4/8/13.
Accession Number: 20130408–5085.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER13–1035–001.
Applicants: Palmco Power CA, LLC.
Description: Palmco Power CA FERC Electric Tariff to be effective 5/9/2013.
Filed Date: 4/9/13.
Accession Number: 20130409–5023.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER13–1253–000.
Applicants: Southern California Edison Company.
Description: Revised Formula Rate: Non-Transmission Depreciation Rates to be effective 1/1/2012.
Filed Date: 4/8/13.
Accession Number: 20130408–5144.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER13–1254–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits Joint OATT Real Power Loss (2013) to be effective 5/1/2013.
Filed Date: 4/9/13.
Accession Number: 20130409–5051.
Comments Due: 5 p.m. ET 4/30/13.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH13–15–000.
Applicants: Centerbridge Partners, L.P.
Description: Centerbridge Partners, L.P. submits FERC–65–B Waiver Notification.
Filed Date: 4/8/13.
Accession Number: 20130408–5191.
Comments Due: 5 p.m. ET 4/29/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–3–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Revisions to Appendix 2 and Appendix 4D of the NERC Rules of Procedure.
Filed Date: 4/8/13.
Accession Number: 20130408–5193.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: RR13–4–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of North American Electric Reliability Corporation for Approval of Amendments to the Delegation Agreement with Texas Reliability Entity, Inc.—Amendments to Texas Reliability Entity, Inc.'s Bylaws.
Filed Date: 4/9/13.
Accession Number: 20130409–5096.
Comments Due: 5 p.m. ET 4/30/13.

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: April 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08864 Filed 4–15–13; 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 electric rate filings:

Docket Numbers: ER11–2970–005.
Applicants: Peetz Logan Interconnect, LLC.
Description: Peetz Logan Interconnect, LLC Amendment to Comp Filing and Motion for Leave to be effective 11/13/2011.
Filed Date: 4/5/13.
Accession Number: 20130405–5105.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER12–1436–004; *ER10–3300–003; ER10–3099–004; ER12–1260–003.*
Applicants: Eagle Point Power Generation LLC, La Paloma Generating Company, LLC, RC Cape May Holdings, LLC, Stephentown Spindle, LLC.
Description: Update to Asset Appendices of generation, transmission and transportation assets of Eagle Point Power Generation LLC, *et al.*
Filed Date: 4/5/13.
Accession Number: 20130405–5175.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER12–2145–003; *ER10–2834–003; ER11–2905–002; ER11–2904–002; ER10–2821–003; ER12–1329–001.*
Applicants: EC&R O&M, LLC, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.
Description: EC&R O&M, LLC, et. al. submits Notice of Change in Status.
Filed Date: 4/8/13.
Accession Number: 20130408–5078.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER13–666–002.
Applicants: Public Service Company of Colorado.
Description: 2013–04–05–NSP–SPNR-Tran-to Load-548 to be effective 1/1/2013.
Filed Date: 4/8/13.
Accession Number: 20130408–5000.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER13–1138–001.
Applicants: Duke Energy Indiana, Inc.
Description: Correction Filing ER13–1138 to be effective 7/1/2012.
Filed Date: 4/8/13.
Accession Number: 20130408–5001.
Comments Due: 5 p.m. ET 4/29/13.

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: April 8, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08863 Filed 4–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 18, 2013, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

993rd—Meeting

Regular Meeting

April 18, 2013—10:00 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–2	AD02–1–000	Agency Business Matters.
	Electric	
E–1	ER13–62–000	NorthWestern Corporation.
E–2	ER13–103–000	California Independent System Operator Corporation.
	ER12–2709–000	Pacific Gas and Electric Company.
	ER13–87–000	San Diego Gas & Electric Company.
E–3	ER13–107–000, ER13–107–001	South Carolina Electric & Gas Company.
E–4	ER13–102–000	New York Independent System Operator, Inc.
E–5	ER13–108–000	Alcoa Power Generating Inc. (Long Sault Division).
E–6	FA11–21–000	North American Electric Reliability Corporation.
E–7	RM13–5–000	Version 5 Critical Infrastructure Protection Reliability Standards.
E–8	RM12–16–000	Generator Requirements at the Transmission Interface.
E–9	RM12–6–001	Revisions to Electric Reliability Organization.
	RM12–7–001	Definition of Bulk Electric System and Rules of Procedure.
E–10	RM10–12–002	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
E–11	EG13–16–000	Prairie Breeze Wind Energy LLC.
E–12	ER12–1772–000	Southwest Power Pool, Inc.
E–13	ER13–63–000	Lockhart Power Company.
E–14	ER11–3326–001, ER11–3326–002, ER11–3327–001, ER11–3327–002, ER11–3330–001, ER11–3330–002.	Midwest Independent Transmission System Operator, Inc.
	Gas	
G–1	RP12–455–001, RP12–455–000	Panhandle Eastern Pipe Line Company, LP.
	Hydro	
H–1	P–2114–208	Public Utility District No. 2 of Grant County, Washington.
H–2	P–14433–001, P–14434–001	Fall River Valley Community Service District KC Pittsfield LLC.
H–3	P–2790–055	Boott Hydropower, Inc., and Eldred L. Field Hydroelectric Facility Trust.
	Certificates	
C–1	CP12–6–001, CP12–7–001	El Paso Natural Gas Company, L.L.C.
C–2	CP12–468–001	Atlas Pipeline Mid-Continent WestTex, LLC Pioneer Natural Resources USA, Inc.
C–3	CP10–449–001	Northern Natural Gas Company.

Issued: April 11, 2013.

Kimberly D. Bose,

Secretary.

A free Web cast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar.

The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–09015 Filed 4–12–13; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–787–000]

El Paso Natural Gas Company, L.L.C.; Notice of Petition for Declaratory Order

Take notice that on April 5, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2012), El Paso Natural Gas Company, L.L.C. (EPNG) submits this Petition for a Declaratory Order seeking guidance on an issue concerning the application and interpretation of EPNG's tariff and contracts, as more fully described in their petition. Specifically, EPNG seeks Commission guidance concerning whether UNS Gas Inc. and Texas Gas Service Company, a Division of ONEOK, Inc., will be entitled to the rate provided by Article 11.2(a) of EPNG's 1996 Settlement (''Article 11.2(a) rate'') after the term of their existing Article 11.2(a) contracts expires on August 31, 2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the 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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Friday, May 3, 2013.

Dated: April 9, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08818 Filed 4–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ13–9–000]

Department of Energy, Bonneville Power Administration; Notice of Petition for Declaratory Order

Take notice that on April 5, 2013, pursuant to sections 35.28(e) and 385.207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Bonneville Power Administration (Bonneville), submitted certain amendments to its Open Access Transmission Tariff (tariff) and a Petition for Declaratory Order requesting the Commission find that Bonneville's tariff, as amended by this filing, substantially conforms or is superior to the Commission's *pro forma* tariff and that Bonneville satisfies the requirements for reciprocity status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 6, 2013.

Dated: April 9, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08819 Filed 4–15–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2013–0213; FRL–9803–5]

Notice of Public Meeting/Webinar: EPA Method Development Update on Drinking Water Testing Methods for Contaminant Candidate List Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water, Standards and Risk Management Division's Technical Support Center (TSC) announces a public meeting/webinar to discuss analytical testing procedures for unregulated contaminants in drinking water that are, or are being considered for inclusion, on the Contaminant Candidate List (CCL). Technical experts from TSC and the EPA Office of Research and Development's National Exposure Research Laboratory Microbiological and Chemical Exposure Assessment Research Division will describe methods currently in development for many CCL contaminants, with an expectation that several of these methods will support future cycles of the Unregulated Contaminant Monitoring Rule (UCMR) program. The agenda for the public meeting/webinar

will include time for public comment for those that pre-register to present information and technical input on analytical testing procedures.

DATES: The public meeting/webinar will be held on Wednesday, May 15, 2013, from 9:00 a.m. to 4:30 p.m., Eastern Time. The meeting/webinar materials will be available from May 15, 2013, to June 17, 2013 to accommodate post-meeting comments. Persons wishing to attend the meeting in-person or on-line via the webinar must register by May 1, 2013, as described in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The public meeting will be held in Room 130/138 at the EPA's Andrew W. Breidenbach Environmental Research Center (AWBERC), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. All attendees must show government-issued photo identification to enter the building, sign in with the security desk and pass through a metal detector. This meeting will also be simultaneously broadcast as a webinar, available through the Internet. Persons wishing to attend the meeting in-person or on-line via the webinar must register by May 1, 2013, by sending an email to: *UCMRWebinar@cadmusgroup.com*. Further information about registration, and participation in the meeting, can be found on the EPA's Unregulated Contaminant Monitoring Program Meetings and Materials Web page: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/calendar.cfm*.

Submit written comments and technical input (described in the **SUPPLEMENTARY INFORMATION** section) by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: OW-Docket@epa.gov*.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* Water Docket, U.S. EPA Docket Center (EPA/DC). Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Docket Center, Water Docket is located in Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. The telephone number for the Water Docket is (202) 566–2426.

Instructions: Direct your information to Docket ID No. EPA–HQ–OW–2013–0213. EPA's policy is that all information received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. If you have such information, you should contact EPA (as described in the **FOR FURTHER INFORMATION CONTACT** section) for instructions on submitting CBI.

FOR FURTHER INFORMATION CONTACT: Any members of the public who wish to receive further information about the meeting/webinar or have questions about this notice or submission of comments should contact Glynda Smith, Technical Support Center, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone number: (513) 569–7652; email address: *smith.glynda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice is directed to the public in general; the action does not impose any requirements. The public meeting/webinar may be of interest to persons who conduct chemical or microbiological testing for drinking water contaminants, and in particular those that conduct testing under the UCMR program.

B. How can I get copies of this document and other related information?

This document is available for download at: *www.regulations.gov*. For other related information, reference Docket ID No. EPA–HQ–OW–2013–0213.

C. How may I participate in this meeting?

Persons interested in attending the meeting in-person or on-line need to register by sending an email to: *UCMRWebinar@cadmusgroup.com* by May 1, 2013. Comments on the meeting/webinar, including technical input regarding potential drinking water analytical testing procedures for one or more contaminants that are, or are likely to be considered for inclusion, on the CCL may be made during the public comment session of the meeting or in writing to the public docket (see **ADDRESSES** section). EPA encourages public input and will allocate time for stakeholder presentations of candidate analytical testing procedures based on the number of registrants that sign up to speak and time available in the meeting. EPA requests that only one person present a statement on behalf of a group or organization. To be placed on the public speaker list, send an email to: *UCMRWebinar@cadmusgroup.com* by May 1, 2013, and indicate that you will be attending the meeting and would like to speak.

Special Accommodations: To request special accommodations for individuals with disabilities, please contact *UCMRWebinar@cadmusgroup.com*. Please allow at least five business days prior to the meeting to allow time to process your request.

D. How can stakeholders identify potential testing procedures for priority unregulated contaminants?

The public meeting/webinar will provide opportunities to learn about EPA's method development work and to provide public comments. In addition, EPA will be posting the meeting/webinar materials in the Docket No. EPA–HQ–OW–2013–2013 from May 15, 2013, to June 17, 2013, to provide an opportunity for written comments.

EPA's preferred method for submission of written comments about testing procedures is through *www.regulations.gov* [Docket ID No. EPA–HQ–OW–2013–0213], though other options are described in the **ADDRESSES** section of this notice. EPA requests that the submitters include: name, affiliation, phone number, mailing address, and email address. However, this information is not required and comments can be submitted anonymously. The following information will be specifically presented in the public meeting/webinar, which commenters should address as applicable:

1. Specify the CCL contaminant(s) that can be analyzed with the drinking water test procedure. Proposed testing procedures should focus on CCL 3 contaminants (*https://federalregister.gov/a/E9–24287*) or contaminants likely to be considered for CCL 4 (nominated contaminants can be viewed at *www.regulations.gov* and referencing Docket ID EPA–HQ–OW–2012–0217). Note that EPA is currently developing the draft CCL 4, which includes consideration of the contaminants that were nominated.

2. Specify the sensitivity, accuracy and precision attainable for the contaminant(s) using the test procedure. Testing procedures submitted for consideration are expected to be validated prior to use. Guidelines for test method validation are described by

the EPA Forum on Environmental Measurement (FEM) in documents available through the FEM Web site (USEPA 2005, USEPA 2009).

3. To the extent possible, specify the cost, availability, and projected laboratory capacity associated with the technology that is being proposed.

4. Provide complete citations for referenced test methods, including author(s), title, journal (or other publication), and date.

5. Provide contact information for the primary investigator, when available.

II. Background

A. How does EPA identify priority contaminants and collect information to judge their occurrence in drinking water?

The 1996 amendments to the Safe Drinking Water Act (SDWA) established the CCL and UCMR programs to provide information that EPA needs to determine whether particular drinking water contaminants should be regulated. The CCL is a list of contaminants that when published are not subject to any proposed or promulgated national primary drinking water regulations, are known or anticipated to occur in public drinking water systems, and may require regulations under SDWA. While the CCL process identifies contaminants that may require regulation, the UCMR program provides the framework to collect data to help determine whether a contaminant occurs at a frequency and concentration that would be of public health concern. EPA published the third CCL (CCL 3) containing 116 contaminants on October 8, 2009 (74 FR 51850) and the third UCMR (UCMR 3) on May 2, 2012 (77 FR 26072). Monitoring under UCMR 3 began January 1, 2013, and will continue until December 31, 2015.

On May 8, 2012, EPA published a **Federal Register** notice (77 FR 27057) requesting nominations of chemical and microbial contaminants for possible inclusion in the fourth drinking water Contaminant Candidate List (CCL 4). A summary of the contaminants nominated for inclusion in CCL 4 can be viewed at *www.regulations.gov* referencing Docket ID EPA–HQ–OW–2012–0217.

B. What is the basis for this action?

Under UCMR, a unique set of up to 30 contaminants is identified every five years for monitoring. In order to correctly identify and quantitate these contaminants in a national monitoring effort, robust testing methods must be available. This public meeting/webinar will provide a forum to hear about and discuss EPA's current drinking water method development for priority contaminants—focusing on CCL 3 and possible CCL 4 contaminants—as well as other testing procedures that may be applicable to these contaminants.

III. References

USEPA. 2005. Validation and Peer Review of U.S. Environmental Protection Agency Chemical Methods of Analysis, FEM Document Number 2005–01. Available at *http://www.epa.gov/fem/agency_methods.htm.*

USEPA. 2009. Method Validation of U.S. Environmental Protection Agency Microbiological Methods of Analysis, FEM Document Number 2009–01. Available at *http://www.epa.gov/fem/agency_methods.htm.*

Dated: April 8, 2013.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2013–08827 Filed 4–15–13; 8:45 am]

BILLING CODE 6550–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9804–3]

Proposed Administrative Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act for the L.E. Carpenter/Dayco Superfund Site Located in Wharton Township, Morris County, New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (''EPA'') is proposing to enter into an administrative settlement agreement (''Settlement Agreement'') with L.E. Carpenter and Company (the ''Settling Party'') pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''). The Settlement Agreement provides for Settling Parties' payment of certain response costs incurred at the L.E. Carpenter/Dayco Superfund Site located within Wharton Township, Morris County, New Jersey (''Site'').

In accordance with Section 122(i) of CERCLA, this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007–1866.

DATES: Comments must be provided by May 16, 2013.

ADDRESSES: Comments should reference the L.E. Carpenter/Dayco Superfund Site, EPA Docket No. CERCLA–02–2011–2008 and should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway—17th Floor, New York, NY 10007.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Clara Beitin, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–4382.

FOR FURTHER INFORMATION CONTACT: Clara Beitin, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–4382.

Dated: March 25, 2013.

Walter Mugdan,

Director, Emergency and Remedial Response Division.

[FR Doc. 2013–08933 Filed 4–15–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as

required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before May 16, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1088.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05–338, FCC 06–42.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and Individuals or households.

Number of Respondents and Responses: 5,340,000 respondents; 6,057,305 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 30 minutes (.50 hours).

Frequency of Response: Annual, monthly, and on occasion reporting requirements; Recordkeeping requirement; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Public Law 102–243. 105 Stat. 2394 (1991); Junk Fax Prevention Act, Public Law 109–21, 119 Stat. 359 (2005).

Total Annual Burden: 3,673,825 hours.

Total Annual Cost: $10,223,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries'', which became effective on January 25, 2010.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02–278 and 05–338, FCC 06–42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The Report and Order and Third Order on Reconsideration contained information collection requirements pertaining to: (1) Opt-out Notice and Do-Not-Fax Requests Recordkeeping in which the rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) Established Business Relationship Recordkeeping whereas the Junk Fax Prevention Act provides that the sender, *e.g.,* a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an ''established business relationship'' (EBR) with the recipient; (3) Facsimile Number Recordkeeping in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) Express Invitation or Permission Recordkeeping where in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.

On October 14, 2008, the Commission released an Order on Reconsideration, FCC 08–239, addressing certain issues raised in petitions for reconsideration and/or clarification filed in response to the Commission's Report and Order and Third Order on Reconsideration (Junk Fax Order), FCC 06–42. In document FCC 08–239, the Commission clarified that: (1) Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public distribution so long as they are obtained from the intended recipient's own directory, advertisement, or Internet site; (2) Reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and (3) a description of the facsimile sender's opt-out mechanism on the first Web page to which recipients are directed in the opt-out notice satisfies

the requirement that such a description appear on the first page of the Web site.

The Commission believes these clarifications will assist senders of facsimile advertisements in complying with the Commission's rules in a manner that minimizes regulatory compliance costs while maintaining the protections afforded consumers under the Telephone Consumer Protection Act (TCPA).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–08841 Filed 4–15–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 17, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices, FCC Form 333.

Form Number: FCC Form 333.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 760 respondents and 760 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 4,560 hours.

Total Annual Cost: None.

Obligation to Respond: Mandatory. The statutory authority for this information collection is in Sections 4(i) and 623(k) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: If individual respondents to this survey wish to request confidential treatment of any data provided in connection with this survey, they can do so upon written request, in accordance with Sections 0.457 and 0.459 of the Commission's rules. To request confidential treatment of their data, respondents must describe the specific information they wish to protect and provide an explanation of why such confidential treatment is appropriate. If a respondent submits a request for confidentiality, the Commission will review it and make a determination.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 (''Cable Act'') requires the Commission to publish annually a report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to effective competition and those that are not subject to effective competition. The Annual Cable Industry Price Survey is intended to collect the data needed to prepare that report. The data from these questions are needed to complete this report.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–08842 Filed 4–15–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities: Proposed Collection Renewal; Comment Request Re Application for Consent To Reduce or Retire Capital

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity, as required by the Paperwork Reduction Act of 1995 (4 U.S.S. chapter 35), to comment on renewal of its information collection entitled, ''Application for Consent to Reduce or Retire Capital'' (OMB No. 3064–0079).

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Email: comments@fdic.gov.*
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Room NY–5050, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about this information collection, please contact Leneta G. Gregorie, by telephone at (202) 898–3719 or by mail at the address identified above. In addition, copies of

the forms contained in the collection can be obtained at the FDIC's Web site: *http://www.fdic.gov/regulations/laws/federal/notices.html.*

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to renew the following information collection:

Title: Application for Consent to Reduce or Retire Capital.

OMB Number: 3064–0079.

Form Number: None.

Estimated Number of applications: 80.

Burden per application: 1 hour.

Total annual burden: 80 hours.

General Description of Collection: This collection requires insured state nonmember banks that propose to change their capital structure to submit an application containing information about the proposed change in order to obtain FDIC's consent to reduce or retire capital. The requirements are set forth in section 18(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)) and Part 303 of the FDIC's regulations (12 CFR 303.241). The FDIC evaluates the information contained in the letter application in relation to statutory considerations and makes a decision to grant or to withhold consent. The statutory considerations include the financial history and condition of the bank; the adequacy of its capital structure; its future earnings prospects; the general character and fitness of its management; the convenience and needs of the community to be served; and, whether or not its corporate powers are consistent with the purpose of the Act.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of April 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–08823 Filed 4–15–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:14 p.m. on Thursday, April 11, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: April 11, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–08988 Filed 4–12–13; 11:15 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Mario Cordero,

Chairman.

The Members of the Performance Review Board Are:

1. William P. Doyle, Commissioner
2. Rebecca F. Dye, Commissioner
3. Michael A. Khouri, Commissioner
4. Richard A. Lidinsky, Jr., Commissioner
5. Clay G. Guthridge, Administrative Law Judge
6. Erin M. Wirth, Administrative Law Judge
7. Florence A. Carr, Deputy Managing Director
8. Rebecca A. Fenneman, General Counsel
9. Karen V. Gregory, Secretary
10. Vern W. Hill, Director, Bureau of Certification and Licensing
11. Peter J. King, Director, Bureau of Enforcement
12. Sandra L. Kusumoto, Director, Bureau of Trade Analysis
13. Ronald D. Murphy, Managing Director
15. Austin L. Schmitt, Director, Strategic Planning and Regulatory Review

[FR Doc. 2013–08871 Filed 4–15–13; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Employee Stock Ownership Plan of Cenlar Capital Corporation,* Ewing, New Jersey; to become a savings and loan holding company by retaining up to 65 percent of the voting shares of Cenlar Capital Corporation, Ewing, New Jersey, and thereby retain voting shares of Cenlar Federal Savings Bank, Trenton, New Jersey.

Board of Governors of the Federal Reserve System, April 11, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–08882 Filed 4–15–13; 8:45 am]

BILLING CODE 6210–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Hearing Procedures

AGENCY: Financial Stability Oversight Council.

ACTION: Notice of availability; response to comments.

SUMMARY: The Financial Stability Oversight Council (Council) has adopted amendments to its hearing procedures (Council Hearing Procedures) for hearings conducted by the Council under Title I and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Council initially approved hearing procedures on May 22, 2012 (Initial Hearing Procedures), and has adopted amendments to apply the procedures to financial institutions engaged in payment, clearing, or settlement activities that are the subject of a proposed designation by the Council under Title VIII of the Dodd-Frank Act.

DATES: *Effective Date:* April 4, 2013.

FOR FURTHER INFORMATION CONTACT: Amias Gerety, Deputy Assistant Secretary for the Financial Stability Oversight Council, at (202) 622–8716; or Thomas E. Scanlon, Senior Counsel, Department of the Treasury, at (202) 622–8170.

SUPPLEMENTARY INFORMATION:

I. Background

On May 22, 2012, the Council approved the Initial Hearing Procedures under sections 111, 113, 804, and 810 of the Dodd-Frank Act.[1] The Initial Hearing Procedures related to the conduct of hearings before the Council in connection with proposed determinations and emergency waivers or modifications made pursuant to Title I and Title VIII of the Dodd-Frank Act. The Council posted the Initial Hearing Procedures on its Web site, *http://www.fsoc.gov*, and on *http://www.regulations.gov*, and issued a notice of availability and request for comment on the procedures.[2] Four comments were submitted.[3]

In general, when the Council makes a proposed determination regarding a nonbank financial company under section 113 of the Dodd-Frank Act or a proposed designation of a financial market utility (FMU) or a payment, clearing, or settlement activity under section 804 of the Dodd-Frank Act, the Council must give the nonbank financial company, FMU, or financial institution engaged in the payment, clearing, or settlement activity notice and an opportunity to contest the proposed determination or designation through a hearing.[4] The Dodd-Frank Act does not set forth procedures for a hearing to contest the proposed determinations or designations. The Council has adopted the Council Hearing Procedures in order to provide procedures for a nonbank financial company, FMU, or financial institution engaged in a payment, clearing, or settlement activity that requests a hearing.

Except for limited amendments, particularly to expand the scope of ''petitioner'' to include a financial institution engaged in payment, clearing, or settlement activities, as discussed below, the Council is not modifying the Initial Hearing Procedures. The Council is issuing this notice to respond to the comments received and to provide guidance on the implementation of the Council Hearing Procedures. In addition, the Council has posted the Council Hearing Procedures on its Web site, *http://www.fsoc.gov*, and on *http://www.regulations.gov*.

II. Amendment to the Initial Hearing Procedures

The Council has expanded the scope of the hearing procedures by amending the definition of ''petitioner'' in § 2 of the Initial Hearing Procedures. The Council is adding a new paragraph (5) to the definition of ''petitioner'' to include ''[a] financial institution which engages in a payment, clearing, or settlement activity that is the subject of a proposed designation, pursuant to section 804 of the Dodd-Frank Act, and which seeks to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.'' Correspondingly, the Council is amending the definition of ''hearing'' to cover a proceeding involving a financial institution which engages in a payment, clearing, or settlement activity. Under section 804(a)(1) of the Dodd-Frank Act, the Council is authorized to designate ''payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.'' [5] Section 804(c) of the Dodd-Frank Act permits a financial institution engaged in payment, clearing, or settlement activities to request a hearing before the Council to demonstrate that the proposed designation (or rescission of designation) of such activities is not supported by substantial evidence.[6] The amendments to the Initial Hearing Procedures clarify that if the Council issues a notice of a proposed designation relating to a payment, clearing, or settlement activity, one or more financial institutions that engage in that activity may request a hearing to contest the Council's action.

In addition, the Council has amended § 5(e) of the Initial Hearing Procedures to provide that petitioners will be entitled, upon request, to obtain a copy of the transcript or other recording of an oral hearing without payment of the cost of the transcript or recording.

[1] 12 U.S.C. 5321, 5323, 5463, and 5469.

[2] Hearing Procedures; Notice of Availability, 77 FR 31,855 (May 30, 2012).

[3] Comments were received from American Financial Services Association (AFSA), American Insurance Association (AIA), Gibson, Dunn & Crutcher LLP (Gibson, Dunn), and The Financial Services Roundtable (the Roundtable).

[4] 12 U.S.C. 5323(e)(1)–(2), 5463(c)(2).

[5] 12 U.S.C. 5463(a)(1).

[6] 12 U.S.C. 5463(c)(2)(C).

III. Guidance on Council Hearing Procedures

A. Oral Hearings

In the context of proposed determinations regarding nonbank financial companies, all four commenters request that the Council amend the procedures to allow for an oral hearing for any petitioner that requests one. For example, one commenter states that ''the Council should exercise its statutory discretion to grant oral hearings to any nonbank financial company that requests one.'' [7] The commenter envisions that an oral hearing would ''provide an effective interactive opportunity for the company to discuss and as necessary challenge the assumptions, views and preliminary conclusions of the Council or its representatives.'' [8]

The Council considered these comments and has determined that an amendment that would grant a petitioner, as a matter of right, an oral hearing to contest a proposed determination is neither necessary nor appropriate. As the commenters note, sections 113 and 804 of the Dodd-Frank Act provide the Council sole discretion to determine whether to afford a petitioner an oral hearing, and the Council Hearing Procedures are consistent with the statute.[9] However, the Council believes that, depending on the particular facts and circumstances, and as may be supported by the petitioner in its request for an oral hearing,[10] the Council may exercise its sole discretion to grant requests for oral hearings. For example, the Council agrees with commenters that an oral hearing could provide a valuable opportunity for the Council or its representatives to pose questions to a petitioner regarding a proposed determination. Thus, for an FMU or nonbank financial company, the Council anticipates that, in exercising its sole discretion to grant an oral hearing, the Council generally will grant a timely request for an oral hearing.

The Council notes that it anticipates that any oral hearing that is granted will consist only of oral testimony or oral argument by the petitioner.[11] No provision of section 113 or section 804 of the Dodd-Frank Act, nor any provision of the Council Hearing Procedures, contemplates that the petitioner may pose questions to Council members or to staff of the Council who have contributed to the work of the proposed determination.[12]

B. Notice to Affiliates and Participation by a Subsidiary

One commenter contends that the Council should provide written notice of a proposed determination to not only the nonbank financial company but also the nonbank financial company's affected subsidiaries.[13] The Council considered this comment and determined that the Initial Hearing Procedures need not be amended in this manner. First, the Council's provision of written notification of a proposed determination falls outside the scope of the Council Hearing Procedures. Second, the Dodd-Frank Act and the Council's regulations require the Council to provide written notification only to the nonbank financial company that is the subject of the proposed determination.[14] Third, as the commenter suggests,[15] the nonbank financial company itself can notify its subsidiaries of the Council's proposed determination.

This commenter also asks the Council to clarify that subsidiaries of a nonbank financial company being considered under any proposed determination have full participatory rights in written and oral hearings.[16] The Council finds that section 113 of the Dodd-Frank Act and the Council's rule and interpretive guidance regarding nonbank financial company determinations [17] do not provide a basis to grant to a subsidiary of a nonbank financial company that is the subject of a proposed determination ''full participatory rights'' in the Council's proceedings. Nonetheless, the Council notes that the Council Hearing Procedures (unchanged from the Initial Hearing Procedures) provide that a petitioner may submit relevant exhibits in support of its written statement, which may include declarations or affidavits from a subsidiary.[18] In addition, § 5(d)(2) of the Council Hearing Procedures (unchanged from the Initial Hearing Procedures) provides that ''[o]ne or more individual officers, employees, or other representatives (including counsel) of the petitioner may appear for the petitioner to present oral testimony, oral argument, or both.'' The Council believes that a representative from one of the petitioner's subsidiaries may qualify as a ''representative'' of the petitioner to appear in an oral hearing, as the petitioner may determine. Thus, the Council believes that the Initial Hearing Procedures need not be amended, because they provide a means for a subsidiary to participate to the extent that a petitioner believes such participation to be appropriate.

C. Designation of the Hearing Clerk and Submission of Materials

One commenter requests that the Council clarify how the appointment of a Hearing Clerk would occur and who may be appointed to that position. In particular, the commenter asks that a

---

[7] Roundtable, at 4. Similarly, AFSA ''strongly urges'' the Council to provide an oral hearing to ''each petitioner that chooses to contest a proposed determination.'' AFSA, at 4.

[8] Roundtable, at 4. *See also* AIA, at 4 (''a company should have an opportunity to examine Council staff that performed the analysis that is the basis for the Council's proposed action, as well as the opportunity to present its own witnesses''). Likewise, another commenter describes an oral hearing as permitting a nonbank financial company to ''communicate interactively with Council members,'' allowing a ''dynamic exchange of information'' between the petitioner and the Council. Gibson, Dunn, at 5.

[9] A commenter suggests that a request for an oral hearing should not be ''unreasonably denied,'' AIA, at 4, and another commenter goes further by suggesting that the Council ''should use its discretion in a broad manner to provide for oral evidentiary hearings, unless [the Council] can demonstrate that such hearings are inappropriate or unnecessary.'' AFSA, at 3–4. As noted above, sections 113 and 804 of the Dodd-Frank Act provide the Council ''sole discretion'' to grant an oral hearing, and the Council Hearing Procedures reflect this statutory standard. Nothing in section 113 or section 804 of the Dodd-Frank Act suggests that the Council bears the burden of showing that an oral hearing is inappropriate or unnecessary in order to deny a request for an oral hearing.

[10] Council Hearing Procedures, § 3(b).

[11] Council Hearing Procedures, § 2.

[12] One commenter recommends that companies receiving a notice of proposed determination should be allowed to ask the Council clarifying questions and the Council should provide necessary responses before a company would have to submit a petition for a hearing under the Council Hearing Procedures. AFSA, at 2. Similarly, a commenter requests that the Council should provide the nonbank financial company the opportunity to obtain copies of the materials upon which the Council's proposed determination is based and to examine Council staff that performed the analysis that forms the basis of the Council's proposed determination. AIA, at 4. The Council has determined not to modify the Initial Hearing Procedures in response to these comments because the notice of proposed determination will include an explanation of the basis of the proposed determination. 12 U.S.C. 5323(e)(1) and 12 C.F.R. 1310.21(b). However, the Council anticipates that relevant staff would be available to answer ministerial or technical questions that a petitioner may have regarding the process for requesting a hearing under the Council Hearing Procedures.

[13] Gibson, Dunn, at 3–4.

[14] 12 U.S.C. 5323(e)(1); 12 CFR 1310.21(b). *See also* Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 FR 21,637, 21,662 (April 11, 2012) (''Before a vote of the Council with respect to *a particular nonbank financial company,* the Council members will review information relevant to the consideration of the nonbank financial company for a Proposed Determination. . . . [T]he Council intends to issue a written notice of the Proposed Determination to *the nonbank financial company,* which will include an explanation of the basis of the Proposed Determination.'') (emphasis added).

[15] Gibson, Dunn, at 3.

[16] Gibson, Dunn, at 5.

[17] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 FR 21,637 (April 11, 2012).

[18] Council Hearing Procedures, § 4(b).

Hearing Clerk be a member of ''senior level staff at the Council.'' [19] Section 2 of the Council Hearing Procedures defines the Hearing Clerk as ''an individual appointed by the Chairperson [of the Council] to facilitate a written or oral hearing before the Council or its representatives.'' The Chairperson must appoint the Hearing Clerk ''[u]pon receipt of a timely written request for a hearing . . .'' [20] Even though the Council has delegated authority to the Chairperson to select the Hearing Clerk, the Council expects the Chairperson to exercise that authority by selecting an individual who is a senior member of the staff of the Council or of a Council member or member agency.

One commenter requests that the number of days afforded to a nonbank financial company petitioner to submit written materials after an oral hearing be extended from seven to fifteen days.[21] The Council believes that the Initial Hearing Procedures need not be amended in this manner because seven days is a reasonable period in light of the fact that, at the time at which this section would be relevant, a nonbank financial company petitioner already will have had an opportunity to submit written materials, and an oral hearing, to contest the Council's proposed determination.

This commenter also states that any limitations on the written materials a petitioner may present, or on the duration of an oral hearing, as permitted under § 3(c) of the Council Hearing Procedures (unchanged from the Initial Hearing Procedures), should be applied by the Hearing Clerk in ''extreme cases only.'' [22] More generally, this commenter requests that, before the Council or the Hearing Clerk selects a date and place the petitioner is required to appear for a hearing, ''the Hearing Clerk communicate with the petitioner to pick a date, time, and place which is convenient for both the petitioner, the Hearing Clerk, and [the Council].'' [23] The Council has determined that the Initial Hearing Procedures need not be amended to address these concerns regarding the particular limitations or arrangements that generally should apply in hearings. Nonetheless, the Council expects that, in the ordinary course of making procedural determinations, the Hearing Clerk will coordinate with the petitioner, as appropriate, for the purpose of facilitating an ''orderly and timely'' hearing.[24]

D. Denial and Dismissal of a Hearing

Section 7 of the Council Hearing Procedures provides that ''[f]ailure to make a timely request for a hearing will waive the petitioner's right to a hearing pursuant to section 113(e)(4) or section 804(d)(2) of the Dodd-Frank Act.'' One commenter requests that the Council clarify that the Council or the Hearing Clerk will verify that the petitioner did, in fact, receive the Council's notice of the proposed determination before a petitioner is deemed to have waived a right for a hearing.[25] The Council expects to take reasonable steps to verify that a petitioner has, in fact, received the Council's notice of proposed determination before determining that a waiver has occurred under § 7 of the Council Hearing Procedures.

Dated: April 4, 2013.

Rebecca H. Ewing,

Executive Secretary, Department of the Treasury.

[FR Doc. 2013–08877 Filed 4–15–13; 8:45 am]

BILLING CODE 4810–25–P

[19] AFSA, at 3.

[20] Council Hearing Procedures, § 3(c).

[21] AFSA, at 4. *See* Council Hearing Procedures, § 5(b)(3)(ii).

[22] AFSA, at 3. *See also* AIA, at 5 (stating that ''due process considerations and fundamental fairness suggest that no limit should be imposed on the ability of a [nonbank financial] company, which is on the brink of being determined by the Council to be subject to Federal Reserve Board supervision, to submit what [the company] concludes is necessary to convince the Council otherwise'').

[23] AFSA, at 4.

[24] Council Hearing Procedures, § 3(c).

[25] AFSA, at 5.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Apps4Tots Health Challenge''

AUTHORITY: 15 U.S.C. 3719.

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: As part of the Department of Health and Human Services digital services strategy, the Health Resources and Services Administration (HRSA), the Office of the National Coordinator for Health Information Technology (ONC), and Healthdata.gov are joining forces in an attempt to leverage two key assets recently made available to the public. The Apps4TotsHealth Challenge is a call for developers, researchers, and other innovators to make use of the Healthdata.gov data API and integrate the TXT4Tots message library into a new or existing platform.

TXT4Tots is a library of short, evidence-based messages focused on nutrition and physical activity. The library is targeted to parents and caregivers of children, ages 1–5 years, and is available in English and Spanish. Content for the messages was derived from American Academy of Pediatrics (AAP) Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents, which uses a developmentally based approach to address children's health needs in the context of family and community.

Healthdata.gov (*www.healthdata.gov*) is the Department's open data catalog, housing metadata records on close to 400 HHS datasets. Recently, Healthdata.gov has enabled a publicly-accessible data application programming interface (API) that allows programmatic access to the TXT4Tots message library.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Public L. No 111–358).

DATES:

- Submission period begins: April 11, 2013.
- Submission period ends: May 20, 2013.
- Winners announced: Health Datapalooza, June 3–4, 2013.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The Apps4TotsHealth Challenge is a call for developers, researchers, and other innovators to make use of the *Healthdata.gov* data API and integrate the TXT4Tots message library into a new or existing platform. The intent of the challenge is two-fold:

1. Showcase the use of the new data API on *Healthdata.gov*.

2. Incorporate the TXT4Tots message library into a new or existing platform.

It is important to note that stand-alone applications that only use the TXT4Tots message library will not be sufficient to qualify for an award. An app that asks for the child's birth date and begins texting the parents based on the age of the child would not be innovative. Instead, we are looking to you to use the TXT4Tots library content as part of a larger application, where these messages will augment existing content and provide for a richer application as a result.

Instructions for how to use the Healthdata.gov data API can be found at *http://healthdata.gov/data-api*.

The application submitted must:

- Demonstrate use of the Healthdata.gov data API to integrate the TXT4Tots message library into an existing platform or new platform aimed at providing interactions between the data source and an existing function.
- Demonstrate the use of the information to augment messaging aimed toward consumer or health care providers.
- The content may be integrated into an existing web, mobile, voice, electronic health record, or other platform for supporting interactions of the content provided with other capabilities. Examples include query-based prompts that generate messages using the library, visualization methods that graphically display messages, delivery of information with other platforms with calendar functions, and uses of gaming approaches aimed at enhancing consumer actions directed from the text library, among others.
- Demonstrate creative user interfaces that optimize the user's understanding of the messages and ease-of-use of the applications.
- Demonstrate means by which services of the native application are enhanced by the integration of the new content.

To be eligible to receive a prize, Solvers must submit (1) the functioning application, or directions to access it, and (2) a PowerPoint slide deck, of no more than seven slides, that describes how the application addresses the requirements above.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this Challenge, participants can access either the *http://www.challenge.gov* Web site or the ONC Investing in Innovation Challenge Web site at *http://www.health2con.com/devchallenge/challenges/onc-i2-challenges/*.

Amount of the Prize

- Total: $25,000 in prizes.
- First Place: $17,500.
- Second Place: $5,000.
- Third Place: $2,500.
- Honorable Mention (no monetary award) for best not-yet-available application.

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria:

- Application usability and intuitive user interface—25%.
- Application completeness—25%.
- Creativity in solving specific health problem(s)—25%.
- Innovative integration into a larger platform (new or existing)—25%.

In order for an entry to be eligible to win this Challenge, it must meet the following requirements:

1. General—Contestants must provide continuous access to the tool, a detailed description of the tool, instructions on how to install and operate the tool, and system requirements required to run the tool (collectively, ''Submission'').

2. Acceptable platforms—The tool must be designed for use with existing web, mobile, voice, electronic health record, or other platform for supporting interactions of the content provided with other capabilities.

3. Section 508 Compliance—Contestants must acknowledge that they understand that, as a pre-requisite to any subsequent acquisition by FAR contract or other method, they may be required to make their proposed solution compliant with Section 508 accessibility and usability requirements at their own expense. Any electronic information technology that is ultimately obtained by HHS for its use, development, or maintenance must meet Section 508 accessibility and usability standards. Past experience has demonstrated that it can be costly for solution-providers to ''retrofit'' solutions if remediation is later needed. The HHS Section 508 Evaluation Product Assessment Template, available at *http://www.hhs.gov/od/vendors/index.html,* provides a useful roadmap for developers to review. It is a simple, web-based checklist utilized by HHS officials to allow vendors to document how their products do or do not meet the various Section 508 requirements.

4. No HHS, ONC, or HRSA logo—The app must not use HHS', ONC's, or HRSA's logos or official seals in the Submission, and must not claim endorsement.

5. Functionality/Accuracy—A Submission may be disqualified if the software application fails to function as expressed in the description provided by the user, or if the software application provides inaccurate or incomplete information.

6. Security—Submissions must be free of malware. Contestant agrees that ONC may conduct testing on the app to determine whether malware or other security threats may be present. ONC may disqualify the app if, in ONC's judgment, the app may damage government or others' equipment or operating environment.

Additional Information

General Conditions: ONC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at ONC's sole discretion. Participation in this Contest constitutes a contestant's full and unconditional agreement to abide by the Contest's Official Rules found at *www.challenge.gov*.

Privacy Policy: ChallengePost collects personal information from you when you register on *Challenge.gov*. The information collected is subject to the ChallengePost privacy policy located at *www.challengepost.com/privacy*.

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the Challenge agreement.
- By participating in the Challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the Challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the Challenge.

Dated: April 8, 2013.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2013–08821 Filed 4–15–13; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nomination for Appointment to the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Service (HHS), Office of Minority Health (OMH), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Health (hereafter referred to as the ''Committee or ACMH''). In accordance with Public Law 105–392, the Committee provides advice to the Deputy Assistant Secretary for Minority Health, on improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of OMH designed to improve the health status and outcomes of racial and ethnic minorities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on May 31, 2013, at the address listed below.

ADDRESSES: All nominations should be mailed to Ms. Monica Baltimore, Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Baltimore, Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852; Telephone: (240) 453–2882.

A copy of the ACMH charter and list of the current membership can be obtained by contacting Ms. Baltimore or by accessing the Web site managed by OMH at *www.minorityhealth.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 105–392, the Secretary of Health and Human Services established the ACMH. The Committee provides advice to the Deputy Assistant Secretary for Minority Health in carrying out the duties stipulated under Public Law 105–392. This includes providing advice on improving the health of racial and ethnic minority populations and in the development of goals and specific program activities of OMH, which are to:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research impacting racial and ethnic minority populations;

(2) enter into interagency agreements with other agencies of the Public Health Service;

(3) support research, demonstrations, and evaluations to test new and innovative models;

(4) increase knowledge and understanding of health risk factors;

(5) develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups;

(6) ensure that the National Center for Health Statistics collects data on the health status of each minority group;

(7) with respect to individuals who lack proficiency in speaking the English language, enter into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of these individuals to such services by developing and carrying out programs to provide bilingual or interpretive services;

(8) support a national minority health resource center to carry out the following:

(a) facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in appropriate use of health care;

(b) facilitate access to such information;

(c) assist in the analysis of issues and problems relating to such matters;

(d) provide technical assistance with respect to the exchange of such information (including facilitating the development of materials for such technical assistance);

(9) carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects; and

(10) advise in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

Management and support services for the ACMH are provided by OMH.

Nominations: OMH is requesting nominations for upcoming vacancies on the ACMH. The Committee is composed of 12 voting members, in addition to non-voting *ex officio* members. This announcement is seeking nominations for voting members. Voting members of the Committee are appointed by the Secretary from individuals who are not officers or employees of the Federal

Authority: 42 U.S.C. 300u-6, Section 1707 of the Public Health Service Act, as amended. The Advisory Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Government and who have expertise regarding issues of minority health. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise working on issues impacting the health of racial and ethnic minority populations. The Committee charter stipulates that the racial and ethnic minority groups shall be equally represented on the Committee membership. OMH is seeking candidates who can represent the health interest of Hispanics/Latino Americans; Blacks/African Americans; American Indians and Alaska Natives; and/or Asian Americans, Native Hawaiians, and other Pacific Islanders.

Mandatory Professional/Technical Qualifications: Nominees must meet all of the following mandatory qualifications to be eligible for consideration.

(1) Expertise in minority health and racial and ethnic health disparities.

(2) Expertise in developing or contributing to the development of science-based or evidence based health policies and/or programs. This expertise may include experience in the analysis, evaluation, and interpretation of federal/state health or regulatory policy.

(3) Involvement in national, state, regional, tribal, and/or local efforts to improve the health status or outcomes among racial and ethnic minority populations.

(4) Educational achievement, professional certification(s) in health-related fields (e.g., health professions, allied health, behavioral/mental health, public health, health policy, health administration/management, etc.), and professional experience that will support ability to give expert advice on issues related to improving minority health and eliminating racial and ethnic health disparities.

(5) Expertise in population level health data for racial and ethnic minority groups. This expertise may include survey, administrative, and/or clinical data.

Desirable Qualifications:

(1) Knowledge and experience in health care systems, cultural and linguistic competency, social determinants of health, evidence-based research, data collection (e.g., federal, state, tribal, or local data collection), or health promotion and disease prevention.

(2) Nationally recognized via peer-reviewed publications, professional awards, advanced credentials, or involvement in national professional organizations.

Requirements for Nomination Submission: Nominations should be typewritten (one nomination per nominator). Nomination package should include: (1) a letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e., specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone number, and email address; (3) the nominee's curriculum vitae, and (4) a summary of the nominee's experience and qualification relative to the mandatory professional and technical criteria listed above. Federal employees should not be nominated for consideration of appointment to this Committee.

Individuals selected for appointment to the Committee shall be invited to serve four-year term. Committee members will receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, racial and ethnic and minority groups, and the disabled are given consideration for membership on HHS federal advisory committees. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of ACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee. Therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: March 26, 2013.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health.

[FR Doc. 2013–08850 Filed 4–15–13; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–12EG]

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 the CDC Reports Clearance Officer at (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) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Use of Smartphones to Collect Information about Health Behaviors: Feasibility Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Despite the high level of public knowledge about the adverse effects of smoking, tobacco use remains the leading preventable cause of disease and death in the U.S., resulting in approximately 443,000 deaths annually. During 2005–2010, the overall proportion of U.S. adults who were current smokers declined from 20.9% to 19.3%. Despite this decrease, smoking rates are still well above Healthy People 2020 targets for reducing adult smoking prevalence to 12%, and the decline in prevalence was not uniform across the population. Timely information on tobacco usage is needed for the design, implementation, and evaluation of public health programs.

New mobile communications technologies provide a unique opportunity for innovation in public health surveillance. Text messaging and smartphone Web access are immediate, accessible, and anonymous, a combination of features that could make smartphones ideal for the ongoing research, surveillance, and evaluation of risk behaviors and health conditions, as well as targeted dissemination of information.

CDC proposes to conduct a feasibility study to evaluate the process of conducting Web surveys by smartphone

and text message surveys by feature phone (cell phones that do not have Web access), the outcomes of the surveys, and the value of the surveys. The universe for this study is English-speaking U.S. residents aged 18–65. The sample frame will consist of a national random digit dial sample of telephone numbers from a frame of known cell phone exchanges. Respondents reached on their cell phones will be asked to complete an initial CATI survey consisting of a short series of simple demographic questions, general health questions, and questions about tobacco and alcohol use. At the conclusion of this brief survey, respondents who have smartphones will be asked to participate in the feasibility study, which consists of a first follow-up survey and, a week later, a second follow-up survey. Those who agree will receive invitations to participate by text message, which will include a link to the survey. A sample of respondents who have feature phones will be asked to participate in a text message pilot, which also consists of a first follow-up survey and a second follow-up survey. Text message respondents will receive a text message inviting them to participate; respondents who opt in will receive text messages with one survey question at a time. Before initiating the feasibility study, CDC will conduct a brief pre-test of information collection forms and procedures.

This study will evaluate: (1) Response bias of a smartphone health survey by comparing data collected via CATI to data collected via smartphones/text messages, and data collected via smartphones to data collected via text messages, (2) relative cost-effectiveness of data collected via CATI to data collected via smartphones/text messages; (3) coverage bias associated with restricting the sample to smartphone users; and (4) the utility of smartphones for completing frequent, short interviews (e.g., diary studies to track activities or events).

OMB approval is requested for one year. Participation is voluntary. There are no costs to respondents other than their time. The total estimated annualized burden hours are 306.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Adults Aged 18 to 65, All cell phone users	Pre-test (CATI Screener/CATI Recruitment ...	20	1	8/60
	Screener/CATI Recruitment	1,990	1	1/60
	Initial CATI Survey	1,590	1	7/60
Adults Aged 18 to 65, Smartphone Users	First Web Survey Follow-up for Smartphone Users.	700	1	3/60
	Second Web Survey Follow-up for Smartphone Users.	595	1	3/60
Adults Aged 18 to 65, Non-smartphone Users	First Text Message Survey Follow-up for non-Smartphone Users.	200	1	3/60
	Second Text Message Survey Follow-up for non-Smartphone Users.	170	1	3/60

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. 2013–08862 Filed 4–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0600]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis and Nontuberculous Mycobacteria Drug Susceptibility Testing OMB # 0920–0600 (exp. 5/31/2013),—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the continuing effort to support domestic public health objectives for treatment of tuberculosis (TB), prevention of multi- drug resistance, and surveillance programs, CDC is requesting approval from the Office of Management and Budget to continue data collection from participants in the Model Performance Evaluation Program for Mycobacterium tuberculosis and Non-tuberculous Mycobacterium Drug Susceptibility Testing. This request includes (a) changing the title of the data collection to ''CDC Model Performance Evaluation (MPEP) for Mycobacterium tuberculosis Drug Susceptibility Testing'' to reflect that nontuberculous mycobacteria are no longer included in the test package; (b) replacement of Laboratory Enrollment Form with a Participant Biosafety Compliance Letter of Agreement; (c) revision of the Pre-shipment Email; (d) addition of Instructions to Participants Letter; (e) revision of the MPEP M. tuberculosis Results Worksheet; (f) entering survey results online using a modified data collection instrument; (g) modification of Reminder Email; (h) modification of Reminder Telephone Script; and (i) modification of the Aggregate Report Letter.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. To reach the goal of eliminating TB, the Model Performance Evaluation Program for Mycobacterium tuberculosis and

Non-tuberculous Mycobacterium Drug Susceptibility Testing is used to monitor and evaluate performance and practices among national laboratories performing M. tuberculosis susceptibility testing. Participation in this program is one way laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

By providing an evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis strains, laboratories also have a self-assessment tool to aid in optimizing their skills in susceptibility testing. The information obtained from the laboratories on susceptibility practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards.

Participants in this program include domestic clinical and public health laboratories. Data collection from laboratory participants occurs twice per year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) samples. The PE samples are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of tests performed annually.

There is no cost to respondents to participate other than their time. The total estimated annual burden hours are 156.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Domestic Laboratory	Participant Biosafety Compliance Letter of Agreement	93	2	5/60
MPEP	*Mycobacterium tuberculosis* Results Worksheet	93	2	30/60
	Online Survey Instrument	93	2	15/60

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. 2013–08861 Filed 4–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0876]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Pretesting of Tobacco Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Pretesting of Tobacco Communications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2013, the Agency submitted a proposed collection of information entitled ''Pretesting of Tobacco Communications'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0674. The approval expires on March 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08860 Filed 4–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0391]

Generic Drug Facilities, Sites, and Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the generic drug facility self-identification reporting period for fiscal year (FY) 2014 will begin on May 1, 2013, and close on June 1, 2013. Generic drug facilities, certain sites, and organizations identified in a generic drug submission are required by the Generic Drug User Fee Amendments of 2012 (GDUFA) to submit, update, or reconfirm identification information to FDA annually.

DATES: For FY 2014, identification information must be submitted, updated, or reconfirmed between May 1, 2013, and June 1, 2013.

ADDRESSES: Electronic tools for submitting the required information may be found on FDA's Web site at the following addresses:

- eSubmitter tool: *http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm108165.htm.*
- Structured Product Labeling (SPL) Xforms: *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/ucm189651.htm.*

Other applications are available commercially.

FOR FURTHER INFORMATION CONTACT: Jaewon Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Rm. 4145, Silver Spring, MD 20993, 301–796–6707, *AskGDUFA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: GDUFA (Pub. L. 112–144, Title III) was signed into law by the President on July 9, 2012, as part of the Food and Drug Administration Safety and Innovation Act. GDUFA is designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA enables FDA to assess user fees to fund critical and measurable enhancements to FDA's generic drugs program. GDUFA will also significantly

improve global supply chain transparency by requiring owners of facilities producing generic drug products and active pharmaceutical ingredients and certain other sites and organizations that support the manufacture or approval of these products to electronically self-identify with FDA and update that information annually.

Annual self-identification is required for two purposes. First, it is necessary to determine the universe of facilities required to pay user fees. Second, self-identification is a central component of an effort to promote global supply chain transparency. The information provided through self-identification enables quick, accurate, and reliable surveillance of generic drugs and facilitates inspections and compliance.

Persons who self-identified for FY 2013 must self-identify again for FY 2014 between May 1, 2013, and June 1, 2013. Additional information including who is required to self-identify, how the information is submitted to FDA, the penalty for failure to self-identify, and the technical specifications are available on *http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/default.htm.*

Please note that registration and listing under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) is a different process than self-identification under GDUFA. Many persons will thus be required to submit information separately to the respective systems. Each system populates its own database to meet unique requirements and deadlines. Both, however, are built on the same platform and based on the same technical standards.

Dated: April 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08806 Filed 4–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0385]

Document to Support Submission of an Electronic Common Technical Document—Specifications for File Format Types Using Electronic Common Technical Document Specifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the following document that supports making regulatory submissions in electronic format using the electronic Common Technical Document (eCTD) specifications: ''Specifications for File Format Types Using eCTD Specification.''

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

FOR FURTHER INFORMATION CONTACT: Virginia Hussong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1161, ≤ Silver Spring, MD 20993, email: *virginia.hussong@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The eCTD is an International Conference on Harmonisation (ICH) standard based on specifications developed by ICH and its member parties. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003, and the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. Previously, formats for files contained within eCTD submissions were limited to those specified in the ''eCTD Backbone File Specification for Modules 2 through 5.3.2.2.'' However, as review tools and methods have changed and with the acceptance of advertising and promotional labeling in the eCTD format, it has become necessary to expand the range of file types accepted.

II. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm, http://www.regulations.gov,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: April 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08867 Filed 4–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[USCG–2013–0054; RITA–2013–0001]

Nationwide Differential Global Positioning System (NDGPS)

AGENCY: Coast Guard, DHS and Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice; request for public comments.

SUMMARY: The Coast Guard and the Research and Innovative Technology Administration are analyzing the current and future user needs and requirements of the Nationwide Differential Global Positioning System (NDGPS). The NDGPS was designed to broadcast signals to improve the accuracy and integrity of the Global Positioning System (GPS) derived positions for surface transportation, as well as other civil, commercial, scientific, and homeland security applications. This analysis will be used to support future NDGPS investment decisions by the Department of Homeland Security and the Department of Transportation beyond fiscal year 2016. This notice seeks comments from Federal, state, and local agencies, as well as other interested members of the public regarding current and future usage of the NDGPS, the need to retain the NDGPS, the impact if NDGPS signals were not available, alternatives to the NDGPS, and alternative uses for the existing NDGPS infrastructure.

DATES: Comments and related material must reach the Docket Management Facility on or before July 15, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0054 or RITA–2013–0001 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Luke Byrd, Coast Guard, NDGPS Program Manager, telephone 202–372–1547 or email *Robert.l.byrd@uscg.mil;* or Timothy A. Klein, Research and Innovative Technology Administration, Senior Policy Advisor, telephone 202–366–0075 or email *NDGPS@dot.gov.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You may submit comments and related material regarding this proposed policy. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2013–0054 or RITA–2013–0001) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a 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* and use ''USCG–2013–0054'' or ''RITA–2013–0001'' as your search term. Locate this notice in the results and click the corresponding ''Comment Now'' box to submit your comment. 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.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and use ''USCG–2013–0054'' or ''RITA–2013–0001'' as your search term. Use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Background and Purpose

The NDGPS augments GPS with an additional differential correction signal. Differential GPS (DGPS) receivers collect transmitted signals from GPS satellites in view, plus the NDGPS correction signals from a nearby NDGPS site. The correction signal improves the accuracy of the GPS position fix.

The NDGPS was developed by the Coast Guard in the 1990s to improve GPS-calculated positions for navigation, for positioning aids to navigation, in support of maritime safety requirements and to offset the error induced by the GPS Selective Availability [1] function at that time. The Coast Guard's authority to establish, maintain, and operate such aids to navigation is found in 14 U.S.C. 81.

In 1997, the Department of Transportation and Related Agencies Appropriations Act of 1998 (Pub. L. 105–66, section 346 (111 Stat. 1449)) authorized the implementation of the inland component of NDGPS. In 2006, RITA assumed the lead agency role for the inland NDGPS sites.

On August 1, 2007, RITA published a notice in the **Federal Register** announcing that it was assessing the user needs and systems requirements of the inland (terrestrial) component of the NDGPS (72 FR 42219). On April 18, 2008, based on RITA's assessment, DOT announced its approval of the continuation of inland NDGPS operations.

There are currently 86 NDGPS sites throughout the United States. The Coast Guard funds 49 NDGPS Maritime sites. DOT funds 29 NDGPS Inland sites. The remaining eight NDPGS sites are under the sponsorship of the U.S. Army Corps of Engineers (USACE), and these sites are not addressed in this notice. For more information on the NDGPS, visit the Coast Guard's Web site at *http://www.navcen.uscg.gov/?pageName=dgpsMain.* Additional information on the NDGPS is available in the 2012 Federal Radionavigation Plan, published by the Department of Defense, DHS, and DOT. A copy of the 2012 Federal Radionavigation Plan is available for viewing in the public docket for this notice.

DHS, through the Coast Guard, and DOT, through RITA, are analyzing the future requirements for the NDGPS to support investment decisions beyond fiscal year 2016. Future investment decisions may include: maintaining NDGPS as currently configured; decommissioning the entire NDGPS as currently configured; decommissioning a portion of the NDGPS and retaining select sites; or developing alternate uses for the NDGPS infrastructure. Contributing factors to these decisions are: (1) Coast Guard changes in policy to allow aids to navigation (ATON) to be positioned with a GPS receiver using Receiver Autonomous Integrity Monitoring (RAIM); (2) increased use of Wide Area Augmentation System (WAAS) in commercial maritime applications; (3) limited availability of consumer-grade NDGPS receivers; (4) no NDGPS mandatory carriage requirement on any vessel within U.S. territorial waters; (5) the May 1, 2000 Presidential Directive turning off GPS Selective Availability; (6) continuing GPS modernization; and (7) the Federal Railroad Administration's determination that NDGPS is not a

[1] Initially, high quality GPS signals were only available for military use. GPS signals available for civilian use were intentionally degraded out of concern that civilian GPS signals could be used to guide precision weapons. This degradation feature is known as Selective Availability. On May 1, 2000, President Clinton announced that the United States would stop using the Selective Availability feature. For more information on Selective Availability, visit the Coast Guard's Web site at *http://www.navcen.uscg.gov/?pageName=gpsSelectiveAvailability.*

requirement for the successful implementation of Positive Train Control.

Request for Comments

This notice seeks comments from Federal, state, and local agencies, as well as other interested members of the public regarding current and future usage of the NDGPS, the need to retain the NDGPS, the impact if NDGPS signals were not available, alternatives to the NDGPS, and alternative uses for the existing NDGPS infrastructure.

We request comments from all interested parties to ensure that we identify the full range and significance of these issues. We specifically request comments regarding the following questions:

(1) To what extent do you use the NDGPS in its current form for positioning, navigation, and timing?

(2) What would be the impact on NDGPS users if the NDGPS were to be discontinued?

(3) If NDGPS were to be discontinued, what alternatives can be used to meet users' positioning, navigation, and timing requirements?

(4) What potential alternative uses exist for the existing NDGPS infrastructure?

After considering all comments, DHS and DOT will inform the public of the agreed course of action with respect to future investment in the NDGPS.

Authority: This notice is issued under the authority of 5 U.S.C. 552(a), 14 U.S.C. 81, and 49 U.S.C. 301 (Pub. L. 105–66, section 346).

Dated: April 8, 2013.

Dana Goward,

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

Dated: April 8, 2013.

Gregory D. Winfree,

Deputy Administrator, Research and Innovative Technology Administration.

[FR Doc. 2013–08844 Filed 4–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N031; 80221–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Revised Recovery Plan for Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final revised recovery plan for Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*), two endangered fish species found in only a few lakes and reservoirs in the upper Klamath Basin and Lost River sub-basin in southern Oregon and northern California. The recovery plan includes recovery objectives and criteria, and specific actions necessary to achieve downlisting and delisting from the Federal List of Endangered and Threatened Wildlife and Plants. We revised this plan because a substantial amount of new information is available related to recovery of both species, making it appropriate to incorporate that new information into the recovery program.

ADDRESSES: You may obtain a copy of the revised recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1936 California Avenue, Klamath Falls, OR 97601 (telephone 541–885–8481).

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, at the above address or telephone number.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) are two species of fish that inhabit a limited number of lakes in southern Oregon and northern California. We listed these species as endangered throughout their entire range under the Act on July 18, 1988 (53 FR 27130). The first recovery plan for the species was published on March 17, 1993 (USFWS 1993, pp. 1–108). However, since a substantial amount of additional information is now available, it is appropriate to revise the plan and incorporate this new information into the recovery program.

Section 4(f) of the Act requires us to provide an opportunity for public review and comment prior to finalization of recovery plans, including revisions to such plans. We made the draft of this revised recovery plan available for public comment from October 18, 2011 through December 19, 2011 (76 FR 64372). We considered all information we received during the public comment period and revised the recovery plan accordingly.

Species Information

Lost River and shortnose suckers are very similar in ecology. They both predominantly inhabit lake environments but also periodically utilize other aquatic habitats. Both species spawn during spring over gravel bottoms in tributary streams and rivers (Buettner and Scoppettone 1990, pp. 19–20, 44–46). A relatively small, but significant, number of Lost River sucker also spawn over gravel bottoms at shoreline springs or upwellings along the margins of Upper Klamath Lake (Janney *et al.* 2009, pp. 8–9). Larvae spend little time in rivers or streams after hatching, drifting passively to downstream lakes within a few days (Cooperman and Markle 2003, p. 1138). Once in a lake environment, larvae move into shallow, vegetated areas along the shoreline. This vegetation provides cover from predators, protection from currents and turbulence, and food sources (Cooperman and Markle 2004, p. 365). Within one to two months, larvae become juveniles and begin to utilize non-vegetated, deeper off-shore areas (Burdick *et al.* 2008, p. 417). Adults occupy open water habitats throughout the year, except during spawning season, when they migrate to spawning areas. Individuals typically become reproductively mature at 4 to 7 years old, and can live for several decades.

The rationales for listing Lost River sucker and shortnose sucker were similar, and many of the same threats continue, such that both species remain in danger of extinction. Habitat loss, including restricted access to spawning and rearing habitat, severely impaired water quality, and increased rates of mortality resulting from entrainment in water management structures, were cited as causes for declines in populations prior to listing (53 FR 27130; July 18, 1988). Although the rate of habitat loss has slowed in recent years, and a significant amount of habitat restoration and screening of water diversion structures has occurred, large amounts of historical sucker habitat remain unavailable or significantly altered. In Upper Klamath

Lake, extremely poor water quality, which occurs periodically throughout the summer, negatively impacts adult survival rates, and although the specific causes are currently unknown, juvenile survival is also low in these populations. The last time a substantial group of juveniles joined the adult populations in Upper Klamath Lake was during the late 1990s (Janney *et al.* 2008, pp. 1820–1823). For both species, these factors resulted in abundances of spawning individuals in 2007 in Upper Klamath Lake that were roughly 40 to 70 percent of their 2001 levels. Furthermore, entrainment of larvae and small juveniles through diversion structures continues to drain significant numbers of individuals from productive populations into extremely poor habitats, from which return is unlikely. Clear Lake Reservoir has a single spawning tributary with poor connectivity when reservoir levels are low and limited passage for spawning migrants when flows are low, making these populations very vulnerable to drought. Morphological and molecular genetics research indicate that hybridization occurs between shortnose sucker and Klamath largescale suckers throughout the range of shortnose sucker. However, further studies are needed to determine the extent and causes of hybridization.

Recovery Plan Objectives and Criteria

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The revised recovery plan contains the following objectives for recovery, which we believe will promote healthy, stable populations of these species:

1. Restore or enhance spawning and nursery habitat in Upper Klamath Lake and Clear Lake Reservoir systems;

2. Reduce negative impacts of poor water quality;

3. Clarify and reduce the effects of non-native organisms on all life stages;

4. Reduce the loss of individuals to entrainment;

5. Establish a redundancy and resiliency enhancement program;

6. Maintain or increase larval production;

7. Increase juvenile survival and recruitment to spawning populations; and

8. Protect existing and increase the number of recurring, successful spawning populations.

As these species meet reclassification and recovery criteria, we review each species' status and consider each species for reclassification on or removal from the Federal List of Endangered and Threatened Wildlife and Plants.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 8, 2013.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2013–08815 Filed 4–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of public meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Dakotas RAC will be held on May 15, 2013 in Spearfish, South Dakota. The meeting will start at 8:00 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: Spearfish Holiday Inn Convention Center, 305 North 27th Street, Spearfish, South Dakota.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana, 59301, (406) 233–2831, *mark_jacobsen@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 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: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics will include: North Dakota and South Dakota Field Office manager updates, Resource Management Plan updates, North Dakota Resource Management Plan Greater Sage-Grouse Amendment updates, council member briefings and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: April 5, 2013.

Diane M. Friez,

Eastern Montana-Dakotas District Manager.

[FR Doc. 2013–08918 Filed 4–15–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the Abandoned Mine Land Problem Area Description form, OSM–76. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1029–0087.

DATES: OMB has up to 60 days to approve or disapprove the information collection requests but may respond

after 30 days. Therefore, public comments should be submitted to OMB by May 16, 2013, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov*, or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*. Please reference 1029–0087 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*. You may also review the information collection request online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information found in the form OSM–76, Abandoned Mine Land Problem Area Description form. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0087, and may be found on the OSM–76 form in OSM's e-AMLIS system. States and Tribes are required to respond to obtain a benefit.

As required by 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection was published on January 29, 2013 (78 FR 6130). One comment was received from a private citizen; however, the comment was not relevant to this information collection request. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: OSM–76—Abandoned Mine Land Problem Area Description Form.

OMB Control Number: 1029–0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's electronic inventory of abandoned mine lands (e-AMLIS). From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM–76.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 2,720.

Total Annual Burden Hours: 7,450.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES**. Please refer to control number 1029–0087 in all correspondence.

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: April 11, 2013.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–08883 Filed 4–15–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0001]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965

ACTION: 30-Day Notice.

The Department of Justice (DOJ), Civil Rights Division (CRT) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 78, Number 28, pages 9742–9743, on February 11, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional ''thirty days'' until May 16, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, U.S. Department of Justice, Voting Section, Civil Rights Division, 950 Pennsylvania Avenue NW., 7243 NWB, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*:

Primary: State or Local or Tribal Government. Other: None.

Abstract: Jurisdictions specially covered under the Voting Rights Act are

required to comply with Section 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,892 respondents will complete each form within approximately 10.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 61,885 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: April 11, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–08868 Filed 4–15–13; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Office of Justice Programs' Solicitation Template

ACTION: Correction 30-Day Notice.

This notice was published in the **Federal Register** Volume 78, Number 66, pages 20693–20694, on April 5, 2013, as a 60 day notice. This is a correction to that notice which should have been published as a 30 day notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRSA) of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information was previously published in the **Federal Register** Volume 78, Number 23, pages 7812–7813, on February 4, 2013, allowing for a 60 day comment period.

Comments are encouraged and will be accepted for thirty days (30) until May 16, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *maria.swineford@usdoj.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the 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 submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Renewal of a currently approved collection (1121–0329 and 1121–0188).

(2) *The Title of the Form/Collection:* OJP Solicitation Template.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* No form number available. Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (e.g., project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system. This collection is also incorporating the previously approved collection for the OJP Budget Detail Worksheet (1121–0188). The Budget Detail Worksheet is only required during the application process, and therefore should be included in this collection with the solicitation template, reducing the number of OMB PRA reviews and approvals needed. The primary respondents are the same, as listed above, and the worksheet provides auto calculated fields and instructions for the necessary budget information required for each application submission (e.g. personnel/benefits, travel, indirect cost rates, etc.). The form is not mandatory and is recommended as guidance to assist the applicant in preparing their budget as authorized in 28 CFR part 66 and 28 CFR part 70.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application include a program narrative and budget details and narrative (formerly 1121–0188). Optional requirements can be imposed depending on the type of program to include, but not limited to: project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, disclosure of pending applications, and research and evaluation independence and integrity. Public reporting burden for this collection of information is estimated at up to 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most

time intensive types of application solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the research application submission process.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: April 4, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–08869 Filed 4–15–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0004]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Interstate Firearms Shipment Report of Theft/Loss

Correction

In notice document 2013–06779, appearing on page 18364 in the issue of Tuesday, March 26, 2013, make the following correction:

On page 18364, in the first column, beginning on the 32nd line, ''[Insert the date 60 days from the date this notice is published in the **Federal Register**]'' should read ''May 28, 2013''.

[FR Doc. C1–2013–06779 Filed 4–15–13; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF MANAGEMENT AND BUDGET

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2013

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2013.

SUMMARY: Public Law 112–25, the Budget Control Act of 2011 amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) by reinstating the discretionary spending limits that had expired after 2002. These limits were further revised by P.L. 112–240, the American Taxpayer Relief Act of 2012 (ATRA). Section 254 of BBEDCA requires the Office of Management and Budget (OMB) to issue a Final Sequestration Report after Congress ends a session to determine whether or not a sequestration of discretionary budget authority is required based on OMB scoring of enacted appropriations legislation against those limits. ATRA, however, delayed the release of this report. Based on its scoring of enacted 2013 appropriations, OMB has determined that a sequestration of discretionary budget authority pursuant to section 251 of BBEDCA is not required. As required, these estimates rely on the same economic and technical assumptions used in the President's 2013 Budget, which the Administration transmitted to the Congress on February 13, 2012.

DATES: *Effective Date:* Sec. 254(b). SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the **Federal Register**.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: *http://www.whitehouse.gov/omb/legislative_reports/sequestration.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768 or Jenny Winkler Murray, 6236 New Executive Office Building, Washington, DC 20503, Email address: *jwinkler@omb.eop.gov,* telephone number: (202) 395–7763, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

Jeffrey D. Zients,

Acting Director.

[FR Doc. 2013–08816 Filed 4–15–13; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 16, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD

20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (DAA–AU–2012–0009, 1 item, 1 temporary item). Master files of an electronic information system used to track information on keys to ammunition storage buildings.

2. Department of the Army, Agency-wide (DAA–AU–2012–0010, 2 items, 2 temporary items). Master files of electronic information systems used to report and share communication security information.

3. Department of Defense, Office of the Secretary of Defense (DAA–0330–2012–0005, 1 item, 1 temporary item). Records relating to the control of protected health information including authorizations, disclosures, and training documentation.

4. Department of Defense, Office of the Secretary of Defense (DAA–0330–2012–0007, 1 item, 1 temporary item). Master files of an electronic information system used to maintain information on students attending primary and secondary schools on military installations.

5. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0003, 6 items, 4 temporary items). Administrative files, draft correspondence files, background decisional files, and training records. Proposed for permanent retention are official correspondence files and briefing books for the Chief and Deputy Chief Administrative Law Judges.

6. Department of Homeland Security, United States Coast Guard (N1–26–12–5, 2 items, 2 temporary items). Master files and reports of an electronic information system used to create on-scene environmental evaluations based on global observation information.

7. Department of the Interior, Bureau of Ocean Energy Management (N1–589–12–2, 8 items, 4 temporary items). Records documenting policy development, agency origin and organization, and decisions and activities of senior executives. Proposed for permanent retention are significant records relating to policy, rulemaking, congressional activities, and public relations.

8. Department of State, Bureau of Administration (DAA–0059–2012–0004, 2 items, 2 temporary items). Master files of an electronic information system used to vet funding requests of foreign businesses and organizations.

9. Department of Transportation, Federal Motor Carrier Safety Administration (DAA–0557–0013–0001, 1 item, 1 temporary item). Master files of an electronic information system used to track and manage grants.

10. Administrative Office of the United States Courts, Office of the Director (N1–116–12–1, 11 items, 6 temporary items). Master files of an electronic information system used to track correspondence. Also included are working group records, subject files, and background files. Proposed for permanent retention are Director and Deputy Director calendars and correspondence, and record sets of briefing books and procedural manuals.

11. Consumer Financial Protection Bureau, Division of External Affairs (N1–587–12–9, 9 items, 7 temporary items). Correspondence, event files, and analysis files. Proposed for permanent retention are high-level event records.

12. Consumer Financial Protection Bureau, Consumer Education and Engagement (N1–587–12–15, 15 items, 13 temporary items). Records related to publications, events, and outreach. Proposed for permanent retention are significant event files and reports to Congress.

13. Federal Retirement Thrift Investment Board, Office of Enterprise Risk Management (N1–474–12–7, 1 item, 1 temporary item). Audit and financial data collected during internal audits.

14. Federal Retirement Thrift Investment Board, Office of Enterprise Risk Management (N1–474–12–9, 2 items, 2 temporary items). Records relating to final audit reports.

Dated: April 4, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–08886 Filed 4–15–13; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0057]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:*

NRC Form 136, ''Security Termination Statement.''

NRC Form 237, ''Request for Access Authorization.''

NRC Form 277, ''Request for Visit or Access Authorization.''

2. *Current OMB approval number:*

3150–0049, NRC Form 136.

3150–0050, NRC Form 237.

3150–0051, NRC Form 277.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:*

NRC Form 136: NRC employees, licensees and contractors.

NRC Form 237: NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees.

NRC Form 277: Any employees of approximately 78 licensees and 7 contracts who hold an NRC access authorization and need to make a visit to NRC, other contractor/licensees or government agencies in which access to classified information will be involved or unescorted area access is desired.

5. *The number of annual respondents:*

NRC Form 136: 300.

NRC Form 237: 420.

NRC Form 277: 60.

6. *The number of hours needed annually to complete the requirement or request:*

NRC Form 136: 50.

NRC Form 237: 84.

NRC Form 277: 10.

7. *Abstract:* The NRC Form 136 is completed by licensees and contractors that are leaving the NRC to acknowledge and accept their continuing security responsibilities. The NRC Form 237 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization. The NRC Form 277 is completed by NRC contractors and licensees who have been granted an NRC access authorization and require verification of that access authorization and need-to-know due to: (1) A visit to the NRC, (2) a visit to other contractors/licensees or government agencies in which access to classified information will be involved, or (3) unescorted area access is desired.

Submit, by June 17, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

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

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

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*.

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0057.

You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0057. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), United States Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 10th day of April 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–08874 Filed 4–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0054]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:*

NRC Form 850A, ''Request for NRC Contractor Building Access.''

NRC Form 850B, ''Request for NRC Contractor Information Technology Access Authorization.''

NRC Form 850C, ''Request for NRC Contractor Security Clearance.''

2. *Current OMB approval number:* 3150–XXXX.

3. *How often the collection is required:* On Occasion.

4. *Who is required or asked to report:* NRC contractors, subcontractors and other individuals who are not NRC employees.

5. *The number of annual respondents:* 500.

6. *The number of hours needed annually to complete the requirement or request:* 85.

7. *Abstract:* Part 10 of Title 10 of the *Code of Federal Regulations* (10 FR), ''Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance,'' establishes requirements that individuals requiring an access authorization and/or employment clearance must have an investigation of their background. The NRC Forms 850A, 850B, and 850C will be used by the NRC to obtain information on NRC contractors, subcontractors, and other individuals who are not NRC employees and require access to the NRC buildings, IT systems, sensitive information, sensitive unclassified information, or classified information.

Submit, by June 17, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

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

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

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*.

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0054.

You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0054. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 10th day of April 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–08875 Filed 4–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0069]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 21 to April 3, 2013. The last biweekly notice was published on April 2, 2013 (78 FR 19746).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0069. You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket NRC–2013–0069. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0069 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0069.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0069 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign

documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment, which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 11, 2013.

Description of amendment request: The proposed amendment would revise Fermi 2 Technical Specifications (TS) to

incorporate the NRC-approved TSTF–423, Revision 1. The proposed amendment would modify TS to risk-inform requirements regarding selected Required Action end states by incorporating the boiling water reactor (BWR) owner's group (BWROG) approved Topical Report NEDC–32988–A, Revision 2, ''Technical Justification to Support Risk-Informed Modification to Selected Required Action End States for BWR Plants.'' Additionally, the proposed amendment would modify the TS Required Actions with a Note prohibiting the use of limiting condition for operation (LCO) 3.0.4.a when entering the preferred end state (Mode 3) on startup.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a change to certain required end states when the TS Completion Times for remaining in power operation will be exceeded. Most of the requested technical specification (TS) changes are to permit an end state of hot shutdown (Mode 3) rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to: (1) Those end states where entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable TS, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical. Risk insights from both the qualitative and quantitative risk assessments were used in specific TS assessments. Such assessments are documented in Section 6 of topical report NEDC–32988–A, Revision 2, ''Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR Plants.'' They provide an integrated discussion of deterministic and probabilistic issues, focusing on specific TSs, which are used to support the proposed TS end state and associated restrictions. The NRC staff finds that the risk insights support the conclusions of the specific TS assessments. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting TSTF–423 are no different than the consequences of an accident prior to adopting TSTF–423. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). If risk is assessed and managed, allowing a change to certain required end states when the TS Completion Times for remaining in power operation are exceeded (i.e., entry into hot shutdown rather than cold shutdown to repair equipment) will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change and the commitment by the licensee to adhere to the guidance in TSTF–IG–05–02, ''Implementation Guidance for TSTF–423, Revision 1, 'Technical Specifications End States, NEDC–32988–A,'' will further minimize possible concerns.

Thus, based on the above, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed. The BWROG's risk assessment approach is comprehensive and follows NRC staff guidance as documented in Regulatory Guides (RG) 1.174 and 1.177. In addition, the analyses show that the criteria of the three-tiered approach for allowing TS changes are met. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A risk assessment was performed to justify the proposed TS changes. The net change to the margin of safety is insignificant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Counsel—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Robert D. Carlson.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (ONS1, ONS2, and ONS3), Oconee County, South Carolina

Date of amendment request: October 30, 2012.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to allow operation of a reverse osmosis system during normal plant operation to purify the water in the borated water storage tanks and the spent fuel pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requests NRC's approval of design features and controls that will be used to ensure that periodic limited operation of a Reverse Osmosis (RO) System during Unit operation does not significantly impact the Borated Water Storage Tank (BWST) or Spent Fuel Pool (SFP) function or other plant equipment. The proposed change also requests NRC to approve proposed Technical Specification (TS) requirements that will impose operating restrictions and isolation requirements on the RO System. Duke Energy evaluated the effect of potential failures, identified precautionary measures that must be taken before and during RO System operation, and identified specific required operator actions to protect affected structures, systems, and components (SSCs) important to safety.

The new high energy piping and non-seismic piping being installed for the RO System is non-QA1 and is postulated to fail and cause an Auxiliary Building flood. Duke Energy determined that adequate time is available to isolate the flood source (BWST or SFP) prior to affecting SSCs important to safety.

The existing Auxiliary Building Flood evaluation postulates a single break in the non-seismic piping occurring in a seismic event. The addition of the RO System will not increase the probability of a seismic event. The existing postulated source of the pipe break in the Auxiliary Building is due to the piping not being seismically designed. The new RO System piping is considered a potential source of a single pipe break for the same reason. The new non-seismic RO System piping is of similar quality as the existing non-seismic piping and is no more likely to fail than the existing piping. As such, the addition of new non-seismic piping does not significantly increase the probability of occurrence of an Auxiliary Building flood due to a single pipe break. An Auxiliary Building flood due to a non-seismic RO

System pipe break does not increase the consequences of the flood since the new non-seismic pipe break is bounded by the Auxiliary Building flood caused by existing non-seismic pipe breaks.

Procedural controls will ensure that the boron concentration does not go below the TS limit as a result of water returned from the RO System with lower boron concentration. Thus, no adverse effects from decreased boron concentration will occur.

The RO System takes suction from the top of the SFP to protect SFP inventory. Plant procedures will prohibit the use of the RO System for the Units 1 & 2 SFP during the time period directly after an outage that requires the Units 1 & 2 SFP level to be maintained higher than the TS Limiting Condition for Operation (LCO) 3.7.11 level requirement. The higher level is required to support TS LCO 3.10.1 requirements for Standby Shutdown Facility (SSF) Reactor Coolant (RC) Makeup System operability (due to the additional decay heat from the recently offloaded spent fuel). Plant procedures will also specify the siphon be broken during this time period so the SFP water above the RO suction point cannot be siphoned off if the RO piping breaks. The proposed change does not impact the fuel assemblies, the movement of fuel, or the movement of fuel shipping casks. The SFP boron concentration, level, and temperature limits will not be outside of required parameters due to restrictions/requirements on the system's operation. In addition, the proposed new TS will require the siphon be broken during movement of irradiated fuel assemblies in the SFP or movement of cask over the SFP. Therefore, RO System operation cannot occur during these activities, effectively eliminating a Fuel Handling Accidents (FHA) from occurring while the RO System is in operation.

The BWST is used for mitigation of Steam Generator Tube Rupture (SGTR), Main Steam Line Break (MSLB), and Loss of Coolant Accidents (LOCAs). The SGTR and MSLB are bounded by the small break (SBLOCA) analyses with respect to the performance requirements for the High Pressure Injection (HPI) System. In the normal mode of Unit operation, the BWST is not an accident initiator. The SFP is evaluated to maintain acceptable criticality margin for all abnormal and accident conditions including FHAs and cask drop accidents. Both the BWST and SFP are specified by TS requirements to have minimum levels/volumes and boron concentrations. The BWST also has TS requirements for temperature. Prior to RO System operation, procedures will require the minimum required initial boron concentration and initial level/volume to be adjusted. Additionally, they will require the RO System to be operated for a specified maximum time period before readjusting volume and boron concentration prior to another RO session. This ensures that the TS specified boron concentration and level/volume limits for both the SFP and the BWST are not exceeded during RO System operation. Thus, the design functions of the BWST and the SFP will continue to be met during RO System operation.

Since the BWST and SFP will still have TS boron concentration and level/volume requirements and the RO System will be isolated prior to increasing radiation levels preventing access to the isolation valve, the mitigation of a LOCA or FHA does not result in an increase in dose consequence. Since the design basis LOCA analysis for Oconee assumes 5 gpm back-leakage from the Reactor Building sump to the BWST, the Emergency Operating Procedure will require the RO System to be isolated from the BWST prior to switch over to the recirculation phase. The proposed TS will require the RO system to be isolated (by breaking the siphon) from the SFPs during fuel handling activities and will require the seismic boundary valve between the BWST and RO System to be OPERABLE in MODES 1, 2, 3, and 4.

The additional controls imposed by the proposed Technical Specifications (TSs) will provide additional assurance that isolation valves and operating restrictions credited to eliminate the need to analyze new release pathways introduced by the RO system will be in place.

Therefore, installation and operation of the RO System during Unit operation and the proposed TS imposing operating restrictions do not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The RO System adds non-seismic piping in the Auxiliary Building. However, the break of a single non-seismic pipe in the Auxiliary Building has already been postulated as an event in the licensing basis. The RO System also does not create the possibility of a seismic event concurrent with a LOCA since a seismic event is a natural phenomena event. The RO System does not adversely affect the Reactor Coolant System pressure boundary. The suction to the RO System, when using the system for BWST purification, contains a normally closed manual seismic boundary valve so the seismic design criteria is met for separation of seismic/non-seismic piping boundaries.

Duke Energy also evaluated potential releases of radioactive liquid to the environment due to RO System piping failures. Design features, controls imposed by the proposed TS, and procedural controls will preclude release of radioactive materials outside the Auxiliary Building by ensuring the RO System will be isolated when required.

The SFP suction line is designed such that the SFP water level will not go below TS required levels, thus the fuel assemblies will have the TS required water level over them. Procedural controls will restrict the use of the RO System and require breaking vacuum on the Units 1 & 2 SFP suction line when the SSF conditions require the SFP level be raised to support SSF RC Makeup System operability. Thus, the SFP water level will not be reduced below required water levels for these conditions. RO System operating restrictions will prevent reducing the SFP boron concentration below TS limits.

Since the BWST and SFP will still have TS boron concentration and level/volume requirements and the RO System will be isolated prior to increasing radiation levels preventing access to the isolation valve, the mitigation of a LOCA or FHA does not result in an increase in dose consequence. Since the design basis LOCA analysis for Oconee assumes 5 gpm back-leakage from the Reactor Building sump to the BWST, the Emergency Operating Procedure will require the RO System to be isolated from the BWST prior to switch over to the recirculation phase. The proposed TS will require the RO system to be isolated (by breaking the siphon) from the SFPs prior to movement of irradiated fuel assemblies in the SFP or movement of cask over the SFP and will require the seismic boundary valve between the BWST and RO System to be OPERABLE in MODES 1, 2, 3, and 4.

The additional controls imposed by the proposed TSs will provide additional assurance that isolation valves and operating restrictions credited to eliminate the need to analyze new release pathways introduced by the RO system will be in place.

Therefore, operation of the RO System during Unit operation will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The RO System adds non-seismic piping in the Auxiliary Building. Duke Energy evaluated the impact of RO System operation on SSCs important to safety and determined that the proposed TS controls and procedural controls will ensure that TS limits for SFP and BWST volume, temperature, and boron concentration will continue to be met during RO operation. For the BWST, these controls will ensure the TS minimum BWST boron concentration and level are available to mitigate the consequences of a small break LOCA or a large break LOCA. For the SFP, these controls ensure the assumptions of the fuel handling and cask drop accident analyses are preserved. Additionally, the failure of non-seismic RO System piping will not significantly impact SSCs important to safety. Oconee's licensing basis does not assume a design basis event occurs simultaneously with a seismic event. The proposed change does not significantly impact the condition or performance of SSCs relied upon for accident mitigation. This change does not alter the existing TS allowable values or analytical limits. The existing operating margin between Unit conditions and actual Unit setpoints is not significantly reduced due to these changes. The assumptions and results in any safety analyses are not impacted. Therefore, operation of the RO System during Unit operation does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street–EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 22, 2013.

Description of amendment request: The proposed amendments would revise the Technical Specification curves for pressure and temperature limits on the reactor coolant system, and limits on heatup and cooldown rates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment replaces the current Oconee Nuclear Station (ONS) Units 1, 2, and 3 pressure/temperature (P–T) limit curves applicable to 33 effective full power years (EFPY) in Technical Specification (TS) 3.4.3 with new P–T limit curves applicable to 54 EFPY. The proposed changes also revise the Reactor Coolant System heatup and cooldown rates and allowable reactor coolant pump combinations of TS Tables 3.4.3–1 and 3.4.3–2. The pressure-temperature (P–T) limit curves in the TSs were conservatively generated in accordance with fracture toughness requirements of ASME Code Section XI, Appendix G, and the minimum pressure and temperature requirements as listed in Table 1 of 10 CFR Part 50, Appendix G. The proposed changes do not impact the capability of the reactor coolant pressure boundary (i.e., no change in operating pressure, materials, seismic loading, etc.).

Therefore, the proposed changes do not increase the potential for the occurrence of a loss of coolant accident (LOCA). The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The proposed P–T limits, heatup and cooldown rates and allowable operating reactor coolant pump combinations are not considered to be an initiator or contributor to any accident analysis addressed in the ONS Updated Final Safety Analyses Report (UFSAR).

The proposed changes will not impact assumptions and conditions previously used in the radiological consequence evaluations nor affect the mitigation of these consequences due to an accident described in the UFSAR. Also, the proposed changes will not impact a plant system such that previously analyzed SSCs might be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR remain as analyzed.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The requirements for P–T limit curves have been in place since the beginning of plant operation. The revised curves are based on a later edition to Section XI of the ASME Code that incorporates current industry standards for P–T curves. The revised curves are based on reactor vessel irradiation damage predictions using Regulatory Guide 1.99 methodology. No new failure modes are identified nor are any SSCs required to be operated outside the design bases.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed P–T curves continue to maintain the safety margins of 10 CFR Part 50, Appendix G, by defining the limits of operation which prevent non-ductile failure of the reactor pressure vessel. Analyses have demonstrated that the fracture toughness requirements are satisfied and that conservative operating restrictions are maintained for the purpose of low temperature overpressure protection. The P–T limit curves provide assurance that the RCS pressure boundary will behave in a ductile manner and that the probability of a rapidly propagating fracture is minimized.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street–EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of amendment request: December 21, 2012.

Description of amendment request: The proposed amendment would Revise Technical Specifications (TS) 3.3.6, ''Containment Ventilation Isolation Instrumentation.'' Specifically, this amendment request proposes to revise Footnote (b) of TS Table 3.3.6–1, ''Containment Ventilation Isolation Instrumentation,'' which specifies the ''Containment Radiation—High'' trip setpoint for two containment area radiation monitors (i.e., 1(2) RE–AR011 and 1(2) RE–AR012). The proposed changes would revise the ''Containment Radiation—High'' trip setpoint from the current, overly conservative value (i.e., a submersion dose rate of less than or equal to 10 mRhr in the containment building), to less than or equal to 2 times the containment building background radiation reading at rated thermal power, which is consistent with NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.'' Upon reaching the ''Containment Radiation—High'' setpoint, these area radiation monitors provide an isolation signal to the containment normal purge, mini purge and post-LOCA (Loss of Coolant Accident) systems' containment isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment ventilation isolation radiation monitors serve two primary functions, they:

a. act as backup to the SI [safety injection] signal to ensure closing of the purge valves; and

b. are the primary means for automatically isolating containment in the event of a fuel handling accident in containment.

Upon sensing a high radiation condition in containment, these area radiation monitors provide an isolation signal to the containment normal purge, mini purge and post- LOCA systems containment isolation valves (i.e., a containment ventilation isolation signal).

The accidents that could potentially be impacted by the proposed change were evaluated; specifically the Loss of Coolant Accident (LOCA), Control Rod Ejection Accident (CREA) and Fuel Handling Accident (FHA) in Containment. The proposed change has no impact on probability of these accidents occurring as the subject containment radiation area monitors detect a high radiation condition resulting from these accidents. The radiation monitors do not initiate any accidents or transients. Changing the ''Containment

Radiation—High'' trip setpoint from ''≤10 mR/hr in the containment building,'' to ''≤2 times the containment building background radiation reading at rated thermal power'' only affects the point (i.e., the radiation level in containment) at which a containment ventilation isolation signal would be generated. The requested change does not involve any physical plant modifications or operational changes that could adversely affect system reliability or performance of the radiation monitors, or that could affect the probability of operator error.

The requested change does not affect any postulated accident precursors and therefore, will not affect the probability of an accident previously evaluated.

The proposed change was evaluated to determine the impact on the dose consequences of the LOCA, CREA, or FHA in containment. The evaluation assumed a containment purge was in progress at the onset of the subject accidents and showed that the proposed change in the containment radiation monitors' setpoint had no effect on the purge valve isolation time. With regard to the LOCA and CREA, the safety analysis assumes a prompt purge valve isolation time (i.e., approximately 60 seconds) that significantly bounds the radiation monitor sensing and response time, and actual valve design closure time (i.e., a total of approximately 7 seconds). The radiation monitor setpoint is not considered in the safety analysis and any dose contribution associated with the containment purge, due to the proposed change in setpoint, was shown to be unaffected; therefore, the proposed change has no impact on the already insignificant dose contribution attributed to a containment purge during an accident of less than one mrem.

The dose consequences associated with the FHA in containment are also not impacted by the proposed change in containment radiation monitor setpoint. The existing dose consequences resulting from a FHA with moving non-RECENTLY IRRADIATED FUEL (i.e., fuel moved more than 48 hours after reactor shutdown) conservatively assume the containment purge valves remain open throughout the event; therefore, a change in the isolation setpoint does not impact the results of this analysis. With regard to movement of RECENTLY IRRADIATED FUEL (i.e., fuel moved less then 48 hours after reactor shutdown), EGC's [Exelon Generation Company] proposal deletes TS LCO [limiting condition for operation] 3.9.4.c.2 which allowed the containment purge valves to be open provided the containment radiation isolation system is OPERABLE. Deletion of TS LCO 3.9.4.c.2 ensures that the containment purge valves are in the closed position when moving RECENTLY IRRADIATED FUEL, thus removing dependence on the containment radiation isolation system and associated radiation monitor setpoint from the FHA dose consequences.

The four other additional TS changes associated with the deletion of LCO 3.9.4, Item c.2, proposed for consistency (i.e., deleting a NOTE regarding MODE applicability, deleting a CONDITION related only to LCO 3.9.4.c.2, deleting a footnote regarding MODE applicability; and deleting two surveillances related to LCO 3.9.4.c.2), also have no affect on either the probability or consequences of an accident previously evaluated.

Based on the above discussion, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change to the design of the Containment Ventilation Isolation System or the manner in which the system operates or provides plant protection. The containment radiation monitors will sense radiation levels in the same way and will respond in the same manner when the setpoint is exceeded. The change in the ''Containment Radiation—High'' setpoint does not create a new failure mode for the associated containment radiation monitors or for any other plant equipment. The deletion of LCO 3.9.4, Item c.2, in support of the setpoint change during refueling operations, is more conservative than the current allowances and actually eliminates a potential failure mode for the assumed open containment ventilation isolation valves as the proposed deletion of LCO 3.9.4, Item c.2 would require the valves to be closed prior to moving RECENTLY IRRADIATED FUEL.

The changes do not result in the creation of any new accident precursors, the creation of any changes to the existing accident scenarios, nor do they create any new or different accident scenarios. Subsequently, the accidents defined in the UFSAR [updated final safety analysis report] continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The analysis methodologies used in the subject safety analyses are not modified as a result of the proposed TS changes to the ''Containment Radiation—High'' trip setpoint or the deletion of LCO 3.9.4, Item c.2, or any of the other four associated TS changes. Although the ''Containment Radiation—High'' trip setpoint is being increased, the increase in response time to a high radiation condition in containment, when compared to the current setpoint, is negligible due to the projected prompt rise in containment radiation level upon initiation of a LOCA. The dose consequences and resultant margin of safety to the regulatory acceptance limits, due to revising the ''Containment Radiation—High'' setpoint to ≤ 2 times the containment building background radiation reading at rated thermal power, was shown to be unaffected for normal at-power containment releases; have a negligible impact on the associated LOCA and CREA accident dose consequences; and have no impact on the FHA when moving RECENTLY IRRADIATED FUEL. Therefore, the proposed changes do not impact any analysis margins.

The proposed changes do not alter the manner in which the safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The current safety analyses remain bounding since their conclusions are not affected by the proposed changes. The safety systems credited in the safety analyses will continue to be available to perform their mitigation functions. All protection signals credited as the primary or secondary accident mitigating functions, and all operator actions credited in the accident analyses remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis.

Based on the above information, the proposed change does not result in a significant reduction in the margin of safety.

Based on the above evaluation, EGC concludes that the proposed amendments do not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92, paragraph (c), and, accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Jeremy S. Bowen.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: January 29, 2013.

Description of amendment request: The license amendment request proposes to remove completed and satisfied license conditions and to correct inadvertent errors and incorrect references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel storage racks, number of fuel assemblies

that may be stored in the spent fuel pool (SFP), decay heat generation rate, or the spent fuel pool cooling and cleanup system. The proposed amendments only limit crediting of burnable absorbers in the spent fuel pool to Integrated Fuel Burnable Absorber (IFBA) rods that were specifically addressed in the currently approved criticality analysis ([Westinghouse Commercial Atomic Power report] WCAP–1 7094–P, Revision 3). The removal of the phrase ''or an equivalent amount of another burnable absorber'' eliminates the possibility of crediting a burnable absorber other than IFBA for storage of spent fuel assemblies in the spent fuel pool without prior NRC's approval. The deletion of the license condition associated with the Boraflex Remedy is editorial as it is no longer applicable. The proposed amendments do not affect the ability of the BAST [boric acid storage tank] to perform its function or the ability of the CREVS [control room emergency ventilation system] to perform its function. These latter proposed TS [technical specification] changes correct inadvertent errors and are consistent with the stated intent of original license submittals or delete license conditions that are no longer applicable or that have been fully satisfied.

The proposed amendments do not cause any physical change to the existing spent fuel storage configuration, fuel makeup, RCS [reactor coolant system] pressure boundary, reactor containment, or plant systems. The proposed amendments do not affect any precursors to any accident previously evaluated or do not affect any known mitigation equipment or strategies.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the spent fuel pool cooling and cleanup system. The proposed amendments do not result in any changes to spent fuel or to fuel storage configurations. The removal of the phrase ''or an equivalent amount of another burnable absorber'' eliminates the possibility of crediting a burnable absorber other than IFBA for storage of spent fuel assemblies in the spent fuel pool without prior NRC approval. The proposed amendments do not affect the ability of the BAST to perform its function or the ability of the CREVS to perform its function. These latter proposed TS changes correct inadvertent errors and are consistent with the stated intent of the original license submittals, delete license conditions that are no longer applicable or have been fully satisfied.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the spent fuel pool cooling and cleanup system. Therefore, the proposed amendments have no impact to the existing margin of safety for subcriticality required by 10 CFR 50.68(b)(4). The other proposed OL [operating license] & TS changes correct inadvertent errors and are consistent with the stated intent of the original license submittals or delete license conditions that are no longer applicable or have been fully satisfied.

Therefore, the proposed amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James Petro, Managing Attorney—Nuclear, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Jessie F. Quichocho.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station,

Nemaha County, Nebraska

Date of amendment request: June 25, 2012.

Description of amendment request: The amendment would revise the description of the Fuel Handling Accident (FHA) in Section XIV–6.4 of the Cooper Nuclear Station (CNS) Updated Safety Analysis Report (USAR). The revised USAR FHA description is based on changes to the Design Basis Accident FHA dose calculation, to reflect a 24-month fuel cycle source term using a Global Nuclear Fuels (GNF) 10×10 fuel array, reduce the bounding Radial Peaking Factor, and revise the total effective dose equivalent (TEDE) contribution to consider the shine contribution from external sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The analyses changes described by this proposed change to the USAR are not initiators to events, and, therefore, do not involve the probability of an accident. The changes to the FHA calculation for radiological dose following a FHA incorporate the following:

—accounts for the increase to the source term owing to the use of Global Nuclear Fuels (GNF) 10×10 fuel exposed over a 24-month fuel cycle,
—reduces the Radial Peaking Factor from 2.0 to 1.95, and
—uses a calculated Control Room shine contribution that is added to the FHA dose consequences.

The NRC computer code RADTRAD Version 3.03 is used for the offsite and Control Room dose calculation. The RADTRAD code was approved for use with the CNS FHA alternative source term (AST) dose calculation in License Amendment 222.

Because the analysis affected by the changes are not considered to be an initiator to any previously analyzed accident, these changes cannot increase the probability of any previously evaluated accident. Therefore, these changes do not increase the probability of occurrence of an accident evaluated previously in the USAR.

The changes in FHA dose consequences to the Control Room occupant resulting from the 24-month cycle/GNF 10×10 source term (without crediting the offset by a reduced Radial Peaking Factor), results in more than a minimal increase in the consequences of an accident previously evaluated in the USAR, as stated in 10 CFR 50.59(c)(2)(iii). However, the resultant dose remains well within the regulatory limits of 10 CFR 50.67. When the reduced Radial Peaking Factor is applied, the dose consequences are minor. Therefore, this change does not significantly increase the consequences of an accident previously evaluated in the USAR.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not involve initiators to any events in the USAR, nor does the activity create the possibility for any new accidents. Rather, this change is a result of the evaluation of the most limiting FHA, which can occur at CNS. The changes to the FHA calculation for radiological dose following a FHA incorporate the following:

—accounts for the increase to the source term owing to the use of GNF 10×10 fuel exposed over a 24-month fuel cycle,
—reduces the Radial Peaking Factor from 2.0 to 1.95, and
—uses a calculated Control Room shine contribution that is added to the FHA dose consequences.

The RADTRAD code accommodates the use of GNF 10×10 fuel exposed over a 24-month fuel cycle in calculating the FHA dose consequences. The reduction in Radial Peaking Factor remains bounding over the

CNS core design. The calculated Control Room shine contribution replaces the previously approved qualitative assessment. The proposed change does not introduce any new modes of plant operation and does not involve physical modifications to the plant. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The dose consequences are calculated in accordance with the regulatory guidance found in RG 1.183. The RADTRAD code was used, as approved for application at CNS with License Amendment 222. With the reduced Radial Peaking Factor applied to the GNF 10×10 fuel that has been exposed over a 24-month fuel cycle, the dose consequences are minor. The calculated shine contribution being added to the total Control Room occupant FHA dose results are less than the previous qualitative assessment results that are being replaced. Accordingly, the safety margins to the regulatory dose limits are preserved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: November 13, 2012.

Description of amendment request: The proposed amendment would revise Renewed Facility Operating License (RFOL) Condition C.12 to clarify that the programs and activities, identified in Appendix A of NUREG–1955 and the Updated Final Safety Analysis Report (UFSAR) supplement are to be completed before the period of extended operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment does not significantly increase the probability of an accident since it does not involve a change to any plant equipment that initiates a plant accident. The change clarifies RFOLC [RFOL Condition] C.12. The license conditions deal with administrative controls over information contained in the Updated Final Safety Analysis Repo[r]t (UFSAR) supplement. The proposed changes are administrative and the license conditions are not an initiator or mitigator of any previously evaluated accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since it does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The license conditions deal with administrative controls over information contained in the UFSAR supplement. No new or different types of equipment will be installed and the basic operation of installed equipment is unchanged.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect design codes or design margins. The change that clarifies RFOLC C.12 is administrative in nature and does not have the ability to affect analyzed safety margins.

Therefore, operation of DAEC in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. James Petro, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert D. Carlson.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 21, 2012.

Description of amendment request: The proposed amendment would modify the current DAEC Technical Specifications (TS) requirement to operate the Standby Gas Treatment System for 10 hours on a frequency specified in the Surveillance Frequency Control Program in accordance with TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT System equipped with electric heaters for a continuous 10 hour period with a requirement to operate the SGT System for 15 continuous minutes without the heaters operating. In addition, the electrical heater output test in the VFTP (Specification 5.5.7.e) is proposed to be deleted and a corresponding change in the charcoal filter testing (Specification 5.5.7.c) be made to require the testing be conducted at a humidity of at least 95% RH, which is more stringent than the current testing requirement of 70% RH.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function which may include mitigating accidents. Thus the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT System equipped with electric heaters for a continuous 10 hour period with a requirement to operate the systems for 15 continuous minutes without the heaters operating. In addition, the electrical heater output test in the VFTP (Specification 5.5.7.e) is proposed to be deleted and a corresponding change in the charcoal filter testing (Specification 5.5.7.c) be made to require the testing be conducted at a humidity of at least 95% RH, which is more stringent than the current testing requirement of 70% RH.

The change proposed for this ventilation system does not change any system

operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT System equipped with electric heaters for a continuous 10 hour period with a requirement to operate the systems for 15 continuous minutes without heaters operating. In addition, the electrical heater output test in the VFTP is proposed to be deleted and a corresponding change in the charcoal filter testing be made to require the testing be conducted at a humidity of at least 95% RH, which is more stringent than the current testing requirement of 70% RH.

The proposed increase to 95% RH in the required testing of the charcoal filters compensates for the function of the heaters, which was to reduce the humidity of the incoming air to below the currently-specified value of 70% RH for the charcoal. The proposed change is consistent with regulatory guidance and continues to ensure that the performance of the charcoal filters is acceptable.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. James Petro, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert D. Carlson.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: April 20, 2012.

Description of amendment request: The proposed amendment would revise the TS 3.1.7 to approve the use of an alternative method, other than the current method of the use of movable incore detectors system, to monitor the position of control rod or shutdown rod, in the event of a malfunction of the microprocessor rod position indication (MRPI) system. The use of this alternative method would reduce the required frequency of flux mapping using the movable incore detector system to determine the position of the control or shutdown rod position that is not being indicated. This will reduce the wear on the movable incore detector system that is also used to complete other required TS surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides an alternative method for verifying rod position of one rod. The proposed change meets the intent of the current specification in that it ensures verification of position of the rod once every 8 hours. The proposed change provides only an alternative method of monitoring rod position and does not change the assumptions or results of any previously evaluated accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides only an alternative method of determining the position of one rod. No new accident initiators are introduced by the proposed alternative manner of performing rod position verification. The proposed change does not affect the reactor protection system. Hence, no new failure modes are created that would cause a new or different kind of accidents from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The basis of TS 3.1.7 states that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for determining the position of the affected rod. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Group, LLC, 750 East Pratt Street, 17 Floor, Baltimore, MD 21202.

NRC Acting Branch Chief: Sean Meighan.

South Carolina Electric and Gas Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: March 26, 2013.

Description of amendment request: The proposed change would amend Combined License Nos.: NPF–93 and NPF–94 for Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from the plant-specific design control document Tier 2* material contained within the Updated Safety Analysis Report (UFSAR) by revising the structural criteria code for anchoring of reinforcement bar within the nuclear island walls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29.

The change of the requirements for anchoring headed reinforcement does not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change of the requirements for anchoring headed reinforcement does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor

does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is to provide the requirements for anchoring nuclear island headed reinforcement. The proposed change does not change the design of the nuclear island structures except to a limited extent to redistribute the shear reinforcement in the walls of the nuclear island. The proposed change does not impact the support, design, or operation of mechanical or fluid systems. The proposed change does not result in a new failure mechanism for the nuclear island structures or new accident precursors. As a result, the design functions of the nuclear island structures and the seismic Category I mechanical and electrical equipment located in the nuclear island are not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus, no margin of safety is reduced. The limited application of alternative criteria for headed reinforcement does not reduce the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart, Acting.

Southern Nuclear Operating Company Docket Nos.: 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: March 20, 2013.

Description of amendment request: The proposed change would amend Combined Licenses Nos.: NPF–91 and NPF–92 for Vogtle Electric Generating Plant (VEGP) Units 3 and 4 by departing from the plant-specific design control document Tier 2* material contained within the Updated Safety Analysis Report (UFSAR) by revising the structural criteria code for anchoring of reinforcement bar within the nuclear island walls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29.

The change of the requirements for anchoring headed reinforcement does not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change of the requirements for anchoring headed reinforcement does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is to provide the requirements for anchoring nuclear island headed reinforcement. The proposed change does not change the design of the nuclear island structures except to a limited extent to redistribute the shear reinforcement in the walls of the nuclear island. The proposed change does not impact the support, design, or operation of mechanical or fluid systems. The proposed change does not result in a new failure mechanism for the nuclear island structures or new accident precursors. As a result, the design functions of the nuclear island structures and the seismic Category I mechanical and electrical equipment located in the nuclear island are not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus, no margin of safety is reduced. The limited application of alternative criteria for headed reinforcement does not reduce the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Blach & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Lawrence Burkhart.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of amendment request: December 17, 2012, as supplemented by January 31, 2013.

Description of amendment request: The amendment revised the Millstone Power Station, Unit 2 (MPS2) Technical Specification (TS) Surveillance Requirement 4.4.3.2 to remove the requirement to perform the quarterly surveillance for a pressurizer power-operated relief valve (PORV) block valve that is being maintained closed in accordance with TS 3.4.3 Action a. The proposed change is consistent with the requirements of the Standard Technical Specification—Combustion Engineering Plants (NUREG–1432, Revision 4).

Date of issuance: March 26, 2013.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 314.

Renewed Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 2012 (78 FR 4472). The supplemental letter dated January 31, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2013.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 2011, as supplemented by letters dated April 11, May 2, and September 5, 2012, and January 9 and March 8, 2013.

Brief description of amendment: The amendment revised Surveillance Requirement (SR) 3.3.8.1.3 (calibration of loss of power instrumentation) to extend the frequency of the SR from 18 to 24 months, and revised certain Allowable Values in TS 3.3.8.1, ''Loss of Power Instrumentation.''

Date of issuance: March 29, 2013.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 179.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register***:* April 17, 2012 (77 FR 22811). The supplemental letters dated April 11, May 2, and September 5, 2012, and January 9 and March 8, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2013.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: September 6, 2012.

Brief description of amendment: The amendment revised the technical specifications (TS) by adding a new Limiting Condition for Operation (LCO) 3.0.8 associated with the impact of inoperable snubbers. This LCO establishes conditions under which TS systems would remain operable when required snubbers are not capable of providing the related support function. The proposed amendment is consistent with NRC's approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

Date of issuance: March 29, 2013.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 251.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* November 27, 2012 (77 FR 70841).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2013.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendment: March 22, 2012, as supplemented by letter dated December 3, 2012.

Brief description of amendment: The proposed amendment would modify technical specification (TS) requirements regarding steam generator tube inspections and reporting as described in Technical Specifications Task Force (TSTF)–510, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' with proposed variations and deviations.

Date of Issuance:. March 25, 2013.

Effective Date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 172 and 170.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the TS and license.

Date of initial notice in **Federal Register***:* (77 FR 31660; May 29, 2012). The December 3, 2012, supplement did not increase the scope of the application and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 2013.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: April 27, 2012, as supplemented on October 15, 2012.

Brief description of amendments: The amendments: (1) Adopted a new methodology for preparation of the

reactor coolant system pressure-temperature (P–T) limits, (2) relocated the P–T limits in the Technical Specifications (TSs) to a new licensee-controlled document, the Pressure and Temperature Limits Report (PTLR), and (3) modified the TSs to add references to the PTLR.

Date of issuance: April 1, 2013.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 286 and 289.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License and TSs.

Date of initial notice in **Federal Register***:* July 3, 2012 (77 FR 39525). The letter dated October 15, 2012, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 2013.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: September 6, 2012, as supplemented by letter dated January 11, 2013.

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.6.2.3, ''Recirculation pH Control System and NaTB Basket Minimum Loading Requirement,'' to reduce the minimum loading requirement of sodium tetraborate.

Date of issuance: April 2, 2013.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 257 and 253.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs.

Date of initial notice in **Federal Register***:* January 25, 2013 (78 FR 5505). The supplement dated January 11, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2013.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendments: September 12, 2012

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to adopt NRC-approved TS Task Force (TSTF) Traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' using the consolidated line item improvement process. Specifically, the amendments revise TS 3.4.17, ''Steam Generator (SG) Tube Integrity,'' TS 5.5.7, ''Steam Generator (SG) Program,'' and TS 5.6.7, ''Steam Generator Tube Inspection Report,'' and include TS Bases changes that summarize and clarify the purpose of the TS.

Date of issuance: March 22, 2013.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 320 and 304.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revise the Operating Licenses and the Technical Specifications.

Date of initial notice in **Federal Register***:* December 26, 2012 (77 FR 76080).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2013.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: March 9, 2012, as supplemented by letter dated October 31, 2012.

Brief description of amendment: The amendment relocated the Fort Calhoun Station (FCS) Technical Specification (TS) Limiting Condition of Operation (LCO) 2.17, Miscellaneous Radioactive Material Sources, and the associated Surveillance Requirement (SR) 3.13, Radioactive Material Sources Surveillance, from the FCS TSs. NUREG–1432, Revision 3, ''Standard Technical Specifications, Combustion Engineering Plants,'' does not contain a TS or SR for radioactive source surveillance. The operability and surveillance requirements for leak checking of miscellaneous radioactive material sources will be incorporated into the FCS Updated Safety Analysis Report and associated plant procedures.

Date of issuance: March 29, 2013.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 271.

Renewed Facility Operating License No. DPR–40: The amendment revised the facility operating license and the Technical Specifications.

Date of initial notice in **Federal Register***:* November 13, 2012 (77 FR 67684). The supplemental letter dated October 31, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 29, 2013.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–272, Salem Nuclear Generating Station, Unit 1, Salem County, New Jersey

Date of application for amendment: May 8, 2012.

Brief description of amendment: The amendment revised Salem Unit 1 Technical Specification (TS) 6.8.4.i, ''Steam Generator (SG) Program,'' to permanently exclude portions of the tube below the top of the steam generator tubesheet from periodic steam generator tube inspections. In addition, this amendment also revises TS 6.9.1.10, ''Steam Generator Tube Inspection Report,'' to provide permanent reporting requirements that have been previously established on an interim basis. The amendment was submitted pursuant to 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit.''

Date of issuance: March 28, 2013.

Effective date: The license amendment is effective as of the date of issuance and shall be implemented within 60 days.

Amendment No.: 303.

Renewed Facility Operating License No. DPR–70: The amendment revised the facility operating license and the Technical Specifications.

Date of initial notice in **Federal Register***:* January 22, 2013 (78 FR 4474).

The Commission' related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 2013.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of April 2013.

For the Nuclear Regulatory Commission.

John D. Monninger,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–08756 Filed 4–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–361; NRC–2013–0070]

Application and Amendment to Facility Operating License Involving Proposed No Significant Hazards Consideration Determination; San Onofre Nuclear Generating Station, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–10, issued to Southern California Edison (SCE, the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Unit 2. The proposed amendment makes a temporary change to the steam generator management program and the license condition for maximum power. For the duration of Unit 2, Cycle 17, the proposed amendment would change the terms ''full range of normal operating conditions'' and ''normal steady state full power operation'' and restricts operation to 70 percent of the maximum authorized power level. ''Full range of normal operating conditions'' and ''normal steady state full power operation'' shall be based upon the steam generators being operated under conditions associated with reactor core power levels up to 70 percent Rated Thermal Power (2406.6 megawatts thermal).

DATES: Submit comments by May 16, 2013. Requests for a hearing or petition for leave to intervene must be filed by June 17, 2013.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Benney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–2767; email: *Brian.Benney@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0070 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0070.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The 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. The application for amendment, dated April 5, 2013, as supplemented on April 9, 2013, is available in ADAMS under Accession Nos. ML13098A043 and ML13100A021, respectively.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0070 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–10, issued to SCE, for operation of SONGS Unit 2, located in San Diego County, California.

The proposed amendment makes a temporary change to the steam generator management program and the license condition for maximum power. For the duration of Unit 2, Cycle 17, the proposed amendment would change the terms ''full range of normal operating conditions'' and ''normal steady state full power operation'' and restricts operation to 70 percent of the maximum authorized power level. ''Full range of normal operating conditions'' and ''normal steady state full power operation'' shall be based upon the steam generators being operated under conditions associated with reactor core power levels up to 70 percent Rated Thermal Power (2406.6 megawatts thermal). Before any issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the license amendment request involves no

significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would reduce the power level for San Onofre Nuclear Generating Station (SONGS) Unit 2 for Cycle 17.

The proposed changes do not affect the probability of any accident initiators because there is no adverse effect on plant operations or plant conditions. The proposed revisions will require that tube integrity will be demonstrated up to 70% Rated Thermal Power and that operation of the SONGS Unit 2 steam generators will be limited to a maximum reactor power level of 70%. As a result, the change will continue to ensure that tube integrity is retained over the range of power levels at which the plant will operate. The proposed change to reduce the power level will not affect the probability of any accident initiators because the only effect on plant operations is to lower the allowable power level. Operation at reduced power is acceptable under the current licensing basis and operation of the plant will remain bounded by the assumptions of the analyses of accidents previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

The proposed changes do not create any new mode of plant operation. The proposed changes do not result in a change to any design function nor do the proposed changes affect any analysis that verifies the capability of a system, structure or component to perform a design function.

The proposed changes maintain consistency between the conditions for which the structural integrity performance criteria (SIPC) must be demonstrated with the maximum power levels at which SONGS Unit 2 will be authorized to operate. SCE will be required to perform operational assessments for steam generator tube integrity as required by the current Technical Specifications for the range of power levels within which SONGS Unit 2 will operate during Cycle 17. The proposed changes do not affect the tube performance criteria for those assessments with the exception that they will be applied over a range of conditions up to and including 70% Rated Thermal Power. Therefore the proposed changes do not involve a significant increase in the probability or consequences of a steam generator tube failure under normal or postulated accident conditions.

As part of the NRC review of SCE's response to the CAL [Confirmatory Action Letter],[1] the NRC provided several Requests for Additional Information (RAIs). The response to RAI 11 [2] assessed safety analysis methods, analysis acceptance criteria, radiological dose consequences, applicability of Technical Specifications Limiting Conditions for Operation, applicability, action statements, surveillances and impact on performance of Surveillance Requirements. The assessment determined operation at reduced power is acceptable with respect to SONGS Unit 2, Cycle 17 reload core design and safety analysis.

The assessment that evaluated how Reactor Coolant System (RCS) flow uncertainty is affected by operation at 70% Rated Thermal Power was provided in the response to RAI 12.[3] This assessment determined that the increase in secondary calorimetric power uncertainty and RCS flow uncertainties are accounted for in the overall uncertainty analysis required by the reload safety analyses as detailed in the response to RAI 11.

The assessment that evaluated how the existing Emergency Core Cooling System (ECCS) analysis accounts for the changes to the steam generator heat transfer characteristics resulting from the installation of the new steam generators was provided in the response to RAI 13.[4] The results and conclusions of this evaluation was that operation at 70% Rated Thermal Power remains bounded by the current SONGS Unit 2 ECCS performance Analyses of Record (AOR) for Large Break Loss-of-Coolant Accident (LBLOCA), Small Break Loss-of-Coolant Accident (SBLOCA), and post Loss-of-Coolant Accident (LOCA) Long Term Cooling (LTC).

The assessment that evaluated how the mechanical and instrumentation and control (I&C) design evaluations performed to support operation at 70% Rated Thermal Power was provided in the response to RAI 14.[5] These evaluations are in addition to the evaluations addressed in RAIs 11, 12 and 13. The results and conclusions of the RAI 14 evaluations were that power operation at 70% Rated Thermal Power will either remain bounded or will not significantly affect the associated systems and programs.

As a result, operation at 70% Rated Thermal Power does not result in a significant increase in the probability or consequences of a previously evaluated accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not require a change in any plant systems, structures or components or the method of operating the plant other than to reduce power for the duration of Cycle 17. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not adversely affect the method of operation of the steam generators nor introduce any changes to existing design functions of systems, structures or components that could create the possibility of a new or different kind of accident from any previously evaluated. Also, the proposed change will not introduce any significant changes to postulated accidents resulting from potential tube degradation. Because SONGS Unit 2 will operate at or below 70% Rated Thermal Power, the change will continue to ensure that tube integrity is demonstrated over the range of power levels at which the plant will operate. Therefore, there is no significant increase in the probability that the tubes will fail or leak during the period.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to reduce the power level during SONGS Unit 2, Cycle 17, will not reduce any margins of safety.

The effect of operation at 70% Rated Thermal Power does not result in SONGS Unit 2 being operated outside of any currently allowable regulatory or licensing limits. SONGS Unit 2 will operate within its current design and licensing basis. Therefore, this change has no significant impact on any parameter that would affect a design basis limit for a fission product barrier, and there would be no significant impact on any margin of safety associated with such barriers.

The proposed changes will maintain consistency between the power level for the steam generator operational assessments in

---

[1] Letter from Mr. Peter T. Dietrich (SCE) to Mr. Elmo E. Collins (USNRC), dated October 3, 2012, Confirmatory Action Letter—Actions to Address Steam Generator Tube Degradation, San Onofre Nuclear Generating Station, Unit 2 (ML12285A263).

[2] Letter from Mr. Richard J. St Onge to NRC, dated April 2, 2013, Response to Request for Additional Information (RAI 11), Revision 1, Regarding Confirmatory Action Letter Response (TAC No. ME9727), San Onofre Nuclear Generating Station, Unit 2 [ML13094A077].

[3] Letter from Mr. Richard J. St Onge to NRC, dated January 18, 2013, Response to Request for Additional Information (RAI 12) Regarding Confirmatory Action Letter Response (TAC No. ME9727), San Onofre Nuclear Generating Station, Unit 2 (ML13022A408).

[4] Letter from Mr. Richard J. St Onge to NRC, dated April 2, 2013, Response to Request for Additional Information (RAI 13), Revision 1, Regarding Confirmatory Action Letter Response (TAC No. ME9727), San Onofre Nuclear Generating Station, Unit 2 (ML13094A080).

[5] Letter from Mr. Richard J. St Onge to NRC, dated January 29, 2013, Response to Request for Additional Information (RAI 14) Regarding Confirmatory Action Letter Response (TAC No. ME9727), San Onofre Nuclear Generating Station, Unit 2 (ML13032A009).

Technical Specification 5.5.2.11 and the maximum power level specified in License Condition 2.C(1). The tube performance criteria, including the margins of safety specified in Technical Specification 5.5.2.11 are not being changed. The changes will ensure that tube integrity is demonstrated against the unchanged performance criteria over the range of power levels at which the plant will be licensed to operate.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Douglas Broaddus.

The Commission is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone

at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from April 16, 2013. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this action, see the application for license amendment dated April 5, 2013, as supplemented on April 9, 2013.

Dated at Rockville, Maryland, this 10th day of April 2013.

For the Nuclear Regulatory Commission.

Brian J. Benney,

Senior Project Manager, SONGS Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–08888 Filed 4–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2013–0001].

DATE: Weeks of April 15, 22, 29, May 6, 13, 20, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 15, 2013

There are no meetings scheduled for the week of April 15, 2013.

Week of April 22, 2013—Tentative

Monday April 22, 2013

9:00 a.m. Meeting with the Department of Energy Office of Nuclear Energy (Public Meeting) (Contact: Brett Rini, 301–251–7615).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

2:30 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

Tuesday April 23, 2013

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai'ichi Accident (Public Meeting) (Contact: William D. Reckley, 301–415–7490).

This meeting will be Web cast live at the Web address—*www.nrc.gov*.

Week of April 29, 2013—Tentative

There are no meetings scheduled for the week of April 29, 2013.

Week of May 6, 2013—Tentative

There are no meetings scheduled for the week of May 6, 2013.

Week of May 13, 2013—Tentative

There are no meetings scheduled for the week of May 13, 2013.

Week of May 20, 2013—Tentative

Monday, May 20, 2013

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Kristin Davis, 301–287–0707)

This meeting will be Web cast live at the Web address—*www.nrc.gov*.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: April 11, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–09022 Filed 4–12–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30459; File No. 812–13887]

Millington Securities, Inc. and Millington Exchange Traded MAVINS Fund, LLC; Notice of Application

April 10, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that permits (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units (collectively, the ''ETF Relief''); and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares (the ''12(d)(1) Relief'').

APPLICANTS: Millington Securities, Inc., (the ''Adviser''), and Millington Exchange Traded MAVINS Fund, LLC (the ''Company'').

DATES: *Filing Dates:* The application was filed on April 6, 2011, and amended on September 23, 2011, June 15, 2012, November 16, 2012, and April 5, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 3, 2013 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 222 South Mill Street, Naperville, IL 60540.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is organized as a Delaware limited liability company and intends to register under the Act as an open-end management investment company. The Company will initially offer one series (''Initial Fund'') whose performance will correspond generally to the price and yield performance of a specified index consisting solely of equity and/or fixed income securities (''Underlying Index'').[1]

2. Applicants request that the order apply to the Initial Fund and any future series of the Company and any other future registered open-end management investment company or series thereof that (a) is advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser,[2] and (b) complies with the terms and conditions of the application (''Future Funds'' and collectively with the Initial Fund, the ''Funds'').[3] Future Funds may be based on Underlying Indexes comprised of foreign and/or domestic equity securities, fixed income securities or a blend of equity securities and fixed income securities.[4] Funds may also invest in ''Depositary Receipts''.[5] A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.

3. Millington Securities, Inc. or another Adviser will be the investment adviser to the Funds. Each Adviser is, or will be registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser, subject to the oversight and approval of the board of directors or trustees of the Company (the ''Board''),[6] will implement each Fund's investment program and oversee the day to day portfolio activities of each Fund. The Adviser may enter into sub-advisory agreements with investment advisers to act as subadvisers with respect to a Fund (each, a ''Subadviser''). Each Subadviser will be registered under the Advisers Act or not subject to such registration and will not otherwise be affiliated with the Company or a Fund. Millington Securities, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') or another entity that is a broker-dealer registered under the Exchange Act (such brokers or dealers, ''Brokers''), will initially act as the distributor and principal underwriter of the Creation Units of Shares (''Distributor'').

4. Each Fund will consist of a portfolio of securities and other assets and positions (''Portfolio Positions'') selected to correspond generally to the price and yield performance of a specified Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Company or a Fund, a promoter, the Adviser, a Subadviser, or the Distributor.

5. The investment objective of each Fund will be to provide investment returns that closely correspond to the price and yield performance of its Underlying Index.[7] Each Fund will sell and redeem Creation Units on a ''Business Day,'' which is defined to include any day that the Company is open for business as required by section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index.[8] Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as a Fund employing the replication strategy. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent, net of fees and expenses.

6. Applicants anticipate that the price of a Share will range from $10 and $250, and the price of one Creation Unit will range from $1,000,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will transmit all purchase orders to the relevant Fund. An Authorized Participant must be either: (a) a Broker or other participant in the Continuous Net Settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Securities''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Securities'').[9] On any given Business

[1] The name of the Initial Fund is expected to be the Millington ISE PIGS™ Index ETF and its Underlying Index is expected to be the ISE PIGS™ Index, an international equity index.

[2] Each such entity and any successor thereto included in the term ''Adviser''. For the purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the requested order are named as applicants. An Acquiring Fund (as defined below) may rely on the requested order only to invest in Underlying Funds (as defined below) and not in any other registered investment company.

[4] Funds based on underlying indices that consist of or include foreign equity securities (''International Equity Indices''), foreign fixed income securities, or both foreign equity and fixed income securities are referred to as ''International Funds''.

[5] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants, any Future Fund, any Adviser, or any Subadviser, will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] The term ''Board'' includes the board of directors or trustees of any Future Fund.

[7] Applicants represent that each Fund will invest at least 80% of its total assets, exclusive of collateral held from securities lending, in the component securities that comprise its Underlying Index (''Component Securities''), or in the case of certain fixed income funds, in the Component Securities of its respective Underlying Index and TBA transactions (as defined below) representing such Component Securities, and in the case of International Funds, in Component Securities, TBA Transactions representing such Component Securities (to the extent applicable), and Depositary Receipts representing such Component Securities. Each Fund also may invest up to 20% of its total assets in certain futures, options, options on futures, and swap contracts, cash and cash equivalents, other investment companies, as well as instruments that are not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index.

A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[8] Using the representative sampling strategy, the Adviser or Subadviser will select each security for inclusion in the Fund's portfolio to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index taken in its entirety.

[9] The Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the

Continued

Day the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Redemption Securities will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Securities and the Redemption Securities will each correspond *pro rata* to the positions in a Fund's portfolio (including cash positions),[10] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [11] or (c) TBA Transactions, derivatives and other positions that cannot be transferred in kind [12] will be excluded from the Deposit Securities and the Redemption Securities; [13] or (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [14] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value attributable to a Creation Unit and the aggregate market value of the Deposit Securities or Redemption Securities exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount''). A difference may occur where the market value of the Deposit Securities or Redemption Securities, as applicable, changes relative to the net asset value of the Fund for the reasons identified in clauses (a) through (e) above.

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [15] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash-in-lieu of some or all of the Deposit Securities or Redemption Securities, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash-in-lieu of some or all of the Deposit Securities or Redemption Securities, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[16]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange''), on which Shares are listed, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Securities and the Redemption Securities, as well as the estimated Balancing Amount (if any), for that day.[17] The list of Deposit Securities and Redemption Securities will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list.

9. Each Fund may impose transaction fees (''Transaction Fee'') in connection with the purchase or redemption of Creation Units. The purpose of the Transaction Fee is to protect the existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[18] The Distributor will furnish a current prospectus (''Prospectus'') or a current summary prospectus and will maintain records of the purchase orders, confirmations of purchase orders and the instructions given to the applicable Fund to implement the delivery of its Shares.

10. Shares will be listed and traded on an Exchange. It is expected that one or more Exchange member firms will be designated to act as a ''Market Maker'', and maintain a market for the Shares trading on the Exchange. The secondary market price of Shares trading on an Exchange will be based on a current bid/offer market. Purchases and sales of Shares on an Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Authorized Participants also may purchase Creation Units for use in market-making activities.[19] Applicants

Securities Act of 1933 (''Securities Act''). In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Deposit Securities and the Redemption Securities, their value will be reflected in the determination of the Balancing Amount (defined below).

[14] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[15] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order) the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[16] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[17] If the Fund is Rebalancing, it may need to announce two estimated Balancing Amounts for that day, one for deposits and one for redemptions.

[18] Where a Fund permits an in-kind purchaser to deposit cash-in-lieu of depositing one or more Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. In all cases, the Transaction Fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[19] If Shares are listed on Nasdaq or a similar electronic Exchange, one or more member firms of that Exchange will act as market maker (''Market Maker''). On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two

expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[20] Applicants believe that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. As discussed above, Creation Units of each Fund will be redeemed generally on an in-kind basis, except under the circumstances described above. The Adviser may adjust the Transaction Fee imposed on redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

13. Neither the Company nor any individual Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange–traded fund'' or an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares being listed and traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund only in Creation Units.

14. The Web site for the Funds (the ''Web site''), which will be publicly accessible at no charge will contain on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or midpoint of the bid-ask spread at the time of the calculation of the NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions.

[20] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order for the ETF Relief that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that Creation Units will always be redeemable in accordance with the provisions of the Act. Owners of Shares may purchase the requisite number of Shares and tender the resulting Creation Unit for redemption. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the price of individual Shares on the secondary market should not vary materially from the NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from non-contract dealers who could offer shares at less than the published sales price and who could pay investors more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market transactions in Shares would not cause dilution for owners of such Shares, because such transactions do not directly involve Fund assets. Similarly, secondary market trading in Shares should not create discrimination or preferential treatment among buyers. To the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-

party market forces, such as supply and demand, but do not occur as a result of discriminatory manipulation. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the margin between NAV and the price for Shares in the secondary market remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the International Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Positions of each International Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[21] With respect to Future Funds that are International Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the statement of additional information (''SAI'') will identify those instances in a given year where, due to local holidays, more than seven days, up to a maximum of 14 calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) with respect to International Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not advised or sponsored by an Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Underlying Funds[22] (collectively, ''Acquiring Funds'') to acquire Underlying Fund Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit an Underlying Fund and/or a Broker to sell Underlying Fund Shares to Acquiring Funds in excess of the limits of section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Acquiring Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Acquiring Fund Subadviser''). Any investment adviser to an Acquiring Fund will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants believe that neither the Acquiring Funds nor an Acquiring Fund Affiliate would be able to exert undue influence over the Underlying Funds.[23] To limit the control that an Acquiring Fund may have over an Underlying Fund, applicants propose a condition prohibiting an Acquiring Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund Subadviser, any person controlling, controlled by or under common control with the Acquiring Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadviser or any person controlling, controlled by or

[21] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

[22] Any registered open-end management investment company and any of its series that is advised by an Adviser and that, pursuant to a separate order of the Commission (File No. 812–13886), operates as an exchange-traded fund that utilizes active management investment strategies (''Actively Managed Funds''), and collectively with the Funds, the ''Underlying Funds''. For purposes of the 12(d)(1) Relief, shares of Actively Managed Funds and Shares are referred to collectively as ''Underlying Fund Shares''.

[23] An ''Acquiring Fund Affiliate'' is the Acquiring Fund Adviser, Acquiring Fund Subadviser(s), any Sponsor, promoter, or principal underwriter of an Acquiring Fund, and any person controlling, controlled by, or under common control with any of these entities. An ''Underlying Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of an Underlying Fund and any person controlling, controlled by or under common control with any of these entities.

under common control with the Acquiring Fund Subadviser (''Acquiring Fund's Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Underlying Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees that are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''independent directors or trustees'') will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Acquiring Management Company may invest. In addition, under condition 13, an Acquiring Fund Adviser or a trustee (''Trustee'') or Sponsor of an Acquiring Trust will, as applicable, waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from the Underlying Fund by the Acquiring Fund Adviser, Trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, in connection with the investment by the Acquiring Fund in the Underlying Fund. Applicants state that any sales charges or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the National Association of Security Dealers (''NASD'').[24]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Underlying Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Acquiring Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Acquiring Fund that intends to invest in an Underlying Fund in reliance on the requested order will enter into an agreement (''Acquiring Fund Agreement'') between the Underlying Fund and the Acquiring Fund requiring the Acquiring Fund to adhere to the terms and conditions of the requested order. The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the requested order only to invest in an Underlying Fund and not in any other investment company.

16. Applicants also note that an Underlying Fund may choose to reject any direct purchase of Creation Units[25] by an Acquiring Fund. To the extent that an Acquiring Fund purchases Shares in the secondary market, an Underlying Fund would still retain its right to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Acquiring Fund Agreement prior to any investment by an Acquiring Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with the power to vote, by the other person, and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Funds solely by virtue of: (1) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (2) having an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25% of the shares of one or more Affiliated Funds.

19. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures of in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as those Portfolio Positions currently held by the relevant Funds, and the valuation of the Deposit Securities and Redemption Securities will be made in the same manner, regardless of the identity or affiliation of the purchaser or redeemer. Further, the Deposit Securities and Redemption Securities for a Fund will be the same, except for any cash determined in accordance with the procedures described in Section III.B.1.b. of the application, and in-kind purchases and redemptions will be on the same terms, for all persons regardless of the identity of the purchaser or redeemer. Therefore, applicants state that in-kind purchases and redemptions will afford no

[24] Any references to Conduct Rule 2830 of the NASD include any successor or replacement rule that may be adopted by Financial Industry Regulatory Authority.

[25] For purposes of the requested 12(d)(1) Relief, the term ''Creation Unit'' applies to both Funds and Actively Managed Funds.

opportunity for the specified affiliated persons, or second-tier affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek an exemption from section 17(a) to permit an Underlying Fund, to the extent that the Underlying Fund is an affiliated person of an Acquiring Fund, to sell its Underlying Fund Shares to, and purchase Underlying Fund Shares from, an Acquiring Fund and to engage in the accompanying in-kind transactions with the Acquiring Fund.[26]

21. Applicants believe that an exemption is appropriate under sections 17(b) and 6(c) because the proposed arrangement meets the standards in those sections.[27] First, applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of Underlying Fund Shares directly from an Underlying Fund will be based on the NAV of the Underlying Fund Shares.[28] Second, applicants believe that the proposed transactions directly between the Underlying Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Units by an Acquiring Fund directly from an Underlying Fund will be accomplished in accordance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. Third, applicants believe that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest. Applicants also submit that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as the Company or a Fund operates in reliance on the requested order, the Shares will be listed on an Exchange.

2. Neither the Company nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site for each Fund, which will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

5. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Subadvisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Underlying Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Underlying Fund, it will vote its Underlying Fund Shares in the same proportion as the vote of all other holders of the Underlying Fund Shares. This condition does not apply to the Acquiring Fund's Subadvisory Group with respect to an Underlying Fund for which the Acquiring Fund Subadviser or a person controlling, controlled by, or under common control with the Acquiring Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

6. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in an Underlying Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Underlying Fund or an Underlying Fund Affiliate.

7. The board of directors or trustees of an Acquiring Management Company, including a majority of the directors or trustees that are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''independent directors or trustees''), will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Subadviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from an Underlying Fund or an Underlying Fund Affiliate in connection with any services or transactions.

8. Once an investment by an Acquiring Fund in Underlying Fund Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Underlying Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Underlying Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Underlying Fund; (b) is within the range of consideration that the Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

9. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment

[26] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Underlying Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Acquiring Fund because an investment adviser to the Underlying Fund is also an investment adviser to the Acquiring Fund.

[27] To the extent that purchases and sale of Underlying Fund Shares of an Underlying Fund occur in the secondary market and not through principal transactions directly between an Acquiring Fund and an Underlying Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Underlying Fund Shares in Creation Units by an Underlying Fund to an Acquiring Fund and redemptions of those Underlying Fund Shares. The requested relief is intended to cover both those direct sales and redemptions and any in-kind transactions that would accompany such sales and redemptions.

[28] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Underlying Fund Shares or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its Underlying Fund Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

adviser to an Underlying Fund) will cause the Underlying Fund to purchase a security in any Affiliated Underwriting.

10. The Board of the Underlying Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Underlying Fund. The Board of the Underlying Fund will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Underlying Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Underlying Fund.

11. Each Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Underlying Fund were made.

12. Before investing in Underlying Fund Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Underlying Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s) or their Sponsors or Trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Underlying Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Underlying Fund of the investment. At such time, the Acquiring Fund will also transmit to the Underlying Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Underlying Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

13. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b-1 under the Act) received from the Underlying Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Underlying Fund, in connection with the investment by the Acquiring Fund in the Underlying Fund. Any Acquiring Fund Subadviser will waive fees otherwise payable to the Acquiring Fund Subadviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from an Underlying Fund by the Acquiring Fund Subadviser, or an affiliated person of the Acquiring Fund Subadviser, other than any advisory fees paid to the Acquiring Fund Subadviser or its affiliated person by the Underlying Fund, in connection with any investment by the Acquiring Management Company in the Underlying Fund made at the direction of the Acquiring Fund Subadviser. In the event that the Acquiring Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

14. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

15. No Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Underlying Fund to purchase shares of other investment companies for short-term cash management purposes.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08854 Filed 4–15–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69361; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 28 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

April 10, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on March 27, 2013, the operating committee (''Operating Committee'' or ''Committee'') [3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan.[4] This amendment represents Amendment No. 28 (''Amendment'') to the Plan and proposes to increase the interrogation device fee, to establish a redistribution fee and to establish a ''net reporting'' option. Pursuant to Rule 608(b)(3)(i) under the Act, the Participants designated the Amendment as establishing or changing a fee or other charge collected on behalf of all of the Participants in connection with access to, or use of, the facilities contemplated by the Amendment. As a result, the Amendment has been put into effect upon filing with the Commission. At any time within 60 days of the filing of the Amendment, the Commission may summarily abrogate the Amendment and require that the Amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Rule 608(a)

A. Purpose of the Amendments

The Amendment proposes to increase the interrogation device fee, to establish a redistribution fee and to establish a ''net reporting'' option.

1. Interrogation Device Fee

The charge for each interrogation device receiving UTP Level 1 Service is currently $20.00 per month. The Participants propose to increase this to $25.00 per month. For that fee, the data recipient will continue to receive inside bid/ask quotations calculated for Nasdaq-listed securities, last sale information on Nasdaq-listed securities, and FINRA OTC Data (collectively, the ''UTP Level 1 Service Market Data''), as it does today.

The $20 interrogation device fee has remained in place since 1997. Thus, the increase amounts to less than a two percent increase per year over a 16 year period. During that period, the amount of market data and the categories of information distributed through the UTP Level 1 Service have grown dramatically. The Processor under the Plan has made hundreds of modifications to the UTP Trade Data Feed and the UTP Quotation Data Feed (''UQDF'') over the past fifteen years to keep up with changes in market structure, regulatory requirements and trading needs. These modifications have added such things as new messages, new fields, and new values within designated fields to the UTP Level 1 Service. They have caused the UTP Level 1 Service to support such industry developments as Regulation NMS, decimalization, limit up/limit down, and many other changes. The growth in prices and quotes distributed over the UTP Level 1 Service has also been dramatic. For instance, from February 2005 to February 2013, the UTP UQDF 5-second peak message rate has increased by a multiple of 15 from 3,789 messages per second to 57,685 messages per second. Over that period, the daily peak rate has increased more than 3-fold to 136,500,547 messages.

In addition, the increase places the level of the fee on a level more commensurate with device charges under other national market system plans. For instance, the Network A Participants under the CTA and CQ Plans recently revised their device fees to establish a four-tier structure, with monthly fees ranging from $50 to $20, depending on the number of devices that a data recipient reports.[5] The Network B Participants under the CTA and CQ Plans recently revised their monthly device fee to $24 per device.[6] Under the OPRA Plan, the device fee is currently $26 per month, and will rise to $27 per month on January 1, 2014.

The Participants note that the number of devices reported under the Nasdaq/UTP Plan has declined significantly in recent years, which has led to a decline in revenues generated under the Plans. (The *Consolidated Data Quarterly Operating Metric Reports* show that the Nasdaq/UTP Plan device population has decreased approximately 10 percent from the fourth quarter of 2010 to the fourth quarter of 2012. Those reports can be found at *http://www.utpplan.com.*)

As described below, the revenue increases that the higher device fee would generate are mitigated in part by the ''net reporting'' option that the Participants are proposing to establish.

2. Redistribution Charge

The Participants propose to establish a new monthly charge of $1,000 for the redistribution of the UTP Level 1 Service Market Data. This will not necessitate any additional reporting obligations. The redistribution charges

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively, ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

[5] *See* Securities Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946 (March 25, 2013) (SR–CTA/CQ–2013–01) (''CTA Release'').

[6] *Id.*

would apply to any entity that makes last sale information or quotation information available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute any of the UTP Level 1 Service Market Data outside of their organization would be required to pay the redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data is limited to its own employees in a controlled environment.

The proposed redistribution charge better harmonizes fees under the Nasdaq/UTP Plan with fees under the CTA, CQ and OPRA Plans. In the CTA Release, the CTA and CQ Plan Participants adopted redistribution charges of $1000 for the redistribution of Network A data and $1000 for the distribution of Network B data. The OPRA Plan imposes a redistribution charge of $1500 per month on every vendor that redistributes OPRA data to any person (or $650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

The Participants note that vendors base their business models on procuring data from exchanges and turning around and redistributing that data to their subscribers. The costs that market data vendors incur for acquiring their inventory (*e.g.,* UTP Level 1 Service Market Data) is very low, sometimes amounting only to their payment of access fees. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community.

3. Net Reporting Program

The Participants propose to adopt a net reporting option for the professional subscriber interrogation device charge (the ''Net Reporting Program''). If a firm complies with the requirements for the Net Reporting Program, this option permits the firm to report only a single interrogation device in cases where the firm provides market data to an employee on multiple internally-controlled, fee-liable interrogation devices. That is, only a single interrogation device fee would apply in respect of that firm's provision of market data to that person, even though he or she receives data on multiple devices. The Participants propose to make the Net Reporting Program available solely for internal interrogation devices in respect of which the firm controls access to market data and not for external interrogation devices or internal interrogation devices for which a vendor (and not the firm) controls access to market data.

This program better harmonizes the Nasdaq/UTP Plan with the CTA and CQ Plans. Those Plans offer the ''Multiple Instance, Single User'' (''MISU'') program. MISU is similar to the Net Reporting Program except in one key respect. Vendors under the Nasdaq/UTP Plan bill their customers on behalf of the Plan Participants. Under the CTA and CQ Plans, the Network A and Network B administrators bill end users directly. Due to the Nasdaq/UTP Plan's indirect billing model, the Participants propose to make the Net Reporting Program available solely to internal interrogation devices. That is, the program will only be available for devices that its employees use and in respect of which the firm controls access to market data.

The Participants will make the Net Reporting Program available only to firms that meet the program's requirements and that Nasdaq, the Nasdaq/UTP Plan's administrator, has approved to participate in advance. To qualify, a firm must demonstrate to Nasdaq that it has adequate internal controls for entitling and monitoring its employees' data usage and for reporting that usage to Nasdaq.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

All of the Participants have manifested their approval of the proposed Amendment by means of their execution of the Amendment. The Participants propose to implement the rate changes as of April 1, 2013. They have already given notice to data recipients of their intention to make the changes effective as of that date.

The Participants understand that April 1, 2013, is the date on which the fee changes that the CTA and CQ Plan Participants set forth in the CTA Release will become effective. The Participants seek to harmonize the timing of the changes set forth in Amendment No. 28 with those of the CTA and CQ Plan Participants.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed Amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. They will cause the fee structure under the Nasdaq/UTP Plan to more closely resemble the fee structures under the CTA, CQ and OPRA Plans.

The Participants cannot say with certainty the impact of the Net Reporting Program. Based on feedback from the firms most likely to take advantage of the program, they estimate that the program will result in approximately a 15 percent reduction in reported devices. With this reduction in reported devices in mind, they estimate that the increase in the interrogation device fee will increase Nasdaq/UTP revenues by approximately $420,000 per month and that the redistribution fee will increase revenues by approximately $235,000 per month. These estimates do not take into account an anticipated continuation of the decline in the number of reported professional subscriber interrogation devices, including a decline due to the attrition that may result from the increased interrogation device rate and the new redistribution fee.

The increase in the interrogation device fee would fall upon broker-dealer firms and other consumers of UTP Level 1 Service. Some of those firms will benefit from the Net Reporting Program. All of those firms have benefitted from 16 years without a price increase.

The new redistribution fee would fall upon market data redistributors, many of whom currently contribute little or nothing to the operation of the securities markets in exchange for their inventory (*i.e.,* the market data they redistribute to their customers).

In the Participants' view, the proposed fee changes would allow data redistributors and data users to contribute an appropriate amount for their receipt and use of market data under the Nasdaq/UTP Plan. They would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, vendors, end users and others receiving and using market data made available under the Nasdaq/UTP Plan.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan as a result of the Amendment.

G. Approval by Sponsors in Accordance With Plan

Each of the Plan's Participants has approved the changes and has executed a written amendment to the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants took a number of factors into account in arriving at the proposed fee changes. The proposed changes promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable data recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for both the network administrator and market data users.

In addition, the Net Reporting Program responds to suggestions of members of the industry that the program would provide for an equitable allocation of dues, fees, and other charges among vendors, who redistribute the Plan's market data, and the firms that consume the data. Similarly, the Participants believe that the redistribution fee would equitably allocate fees to redistributors, many of whom currently pay little in the way of market data fees. The increase in the interrogation device fee follows 16 years of no change in the rate and sets the fee at a level that is commensurate with its counterparts under the other national market system plans.

The Participants would apply the interrogation device fee, the redistribution fee and the Net Reporting Program uniformly to all firms qualifying for the Program (including members of the Participant markets and non-members) and do not believe that any of the proposed changes introduce terms that are unreasonably discriminatory.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

The Net Reporting Program will require a program participant to report on a monthly basis, just as it does today. The only difference is that the firm would be able to report only a single interrogation device in cases where the firm provides market data to an employee on multiple internally-controlled, fee-liable interrogation devices.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 28. 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 Number S7–24–89 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 S7–24–89. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 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 Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. 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 S7–24–89 and should be submitted on or before May 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08866 Filed 4–15–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 18, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

[7] 17 CFR 200.30–3(a)(27).

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

adjudicatory matters; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 11, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–08998 Filed 4–12–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69202; File No. SR–BOX–2013–15]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Establish Fees for Mini Options on BOX

March 21, 2013.

Correction

In notice document 2013–7009, appearing on pages 18642–18646 in the issue of Wednesday, March 27, 2013, make the following correction:

On page 18642, in the second column, the Release No. and File No., which were inadvertently omitted from the document heading, are added to read as set forth above.

[FR Doc. C1–2013–07009 Filed 4–15–13; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69360; File No. SR–CBOE–2013–041]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Rule 6.53

April 10, 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 28, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.53—Certain Types of Orders Defined. 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 the 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 amend its definition of a Qualified Contingent Cross (''QCC'') Order. A QCC Order is an order to buy (or sell) at least 1,000 standard option contracts or 10,000 mini-option contracts [3] that is identified as being part of a qualified contingent trade [4] coupled with a contra-side order to sell (or buy) an equal number of contracts. QCC Orders were initially adopted by the International Securities Exchange, LLC (''ISE'') and approved by the Commission.[5] The Exchange opposed the ISE proposal and the adoption of QCC Orders, but for competitive reasons elected to adopt QCC Order rules on CBOE.[6] The rules the Exchange adopted regarding QCC Orders were explicit in stating that QCC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange added language regarding mini-options due to the beginning of trading of mini-options. *See* SR–CBOE–2013–036, available at *http://www.cboe.com/publish/RuleFilingsSEC/SR-CBOE-2013-036.pdf*.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. *See* CBOE Rule 6.53(u)(i).

[5] ISE first proposed to adopt a qualified contingent cross order type through SR–ISE–2009–35. This proposal was approved by the Commission's Division of Trading and Markets (the ''Division'') pursuant to delegated authority on August 28, 2009, Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) (SR–ISE–2009–35), but this approval was stayed by a CBOE petition seeking full Commission review. *See* Letters from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated September 4 and 14, 2009. ISE thereafter submitted its modified rule change, SR–ISE–2010–73, and a letter requesting that the Commission vacate the Division's approval of SR–ISE–2009–35 simultaneous with the approval of SR–ISE–2010–73. CBOE submitted numerous letters objecting to ISE's original and modified qualified contingent cross proposals, however, the Commission approved SR–ISE–2010–73 and set aside SR–ISE–2009–35 on February 24, 2011. *See* Securities Exchange Act Release Nos. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010) (SR–ISE–2010–73) (ISE Proposal), 63955 (February 24, 2011) (SR–ISE–2010–73) (ISE Approval), and 69354 (February 24, 2011) (SR–ISE–2009–35); *see also, e.g.,* CBOE comment letters and materials dated July 16, 2009, September 4, 2009, September 14, 2009, September 17, 2009, December 3, 2009, January 20, 2010, April 7, 2010, and April 9, 2010.

[6] *See* Securities Exchange Act Releases Nos. 64354 (April 27, 2011), 76 FR 25392 (May 4, 2011) (SR–CBOE–2011–041) and 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR–CBOE–2011–041).

Orders may only be entered in the standard increments applicable to simple orders in the options class under Exchange Rule 6.42—Minimum Increments of Bids and Offers.[7] In effect, this language limits the entry of QCC Orders to $0.10, $0.05, or $0.01 increments, with the increment of trading being the standard trading increment applicable to simple orders in the individual option series in question, regardless of whether there are one or multiple options legs of the QCC Order.

Rule 6.42 permits the entry of legs of a complex order in $0.01 increments (regardless of the standard trading increment applicable to the options class of each leg).[8] This would allow for QCC Orders with multiple legs to be traded in $0.01 increments (regardless of the standard trading increment applicable to the options class of each leg), were it not for the above-referenced language that limits the entry of QCC Orders to the standard increments applicable to simple orders in the options class of each leg. As such, the Exchange proposes to amend its definition of a QCC Order to state that such orders with one option leg may only be entered in the standard increments applicable to simple orders in the options class under Rule 6.42, but QCC Orders with more than one option leg may be entered in the increments specified for complex orders under Rule 6.42. (which is $0.01 increments). This change would put the trading of QCC Orders with multiple legs on the same footing as the trading of other types of complex orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it gives CBOE market participants and investors who enter QCC Orders with multiple legs the same trading increment options as those who enter other types of orders with multiple legs (complex orders). Further, the Exchange believes that ISE permits trading of QCC Orders with multiple legs in $0.01 increments, regardless of the standard increments applicable to simple orders in the options class.[11]

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. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it will apply to all market participants. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intermarket competition because the Exchange believes that ISE permits trading of QCC orders with multiple legs in $0.01 increments, regardless of the standard increments applicable to simple orders in the options class,[12] and therefore the proposed change would put CBOE on an even competitive footing with ISE.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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–CBOE–2013–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–041. 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 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

[7] *See* Exchange Rule 6.53(u).

[8] *See* Exchange Rule 6.42(4)(a).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] ISE Rule 721 states that QCC orders ''may only be entered in the regular trading increments applicable to the options class under Rule 710'' (*See* ISE Rule 721(b)(2)). ISE Rule 710 states that if an options contract is trading at $3.00 per option or higher, the minimum trading increment is $.10, and if an options contract is trading at less than $3.00 per option, the minimum trading increment is $.05 (*See* ISE Rule 710). ISE Rule 722(b)(1) states that the leg(s) of a complex order may be executed in one cent increments, regardless of the minimum increments otherwise applicable to the individual legs of the order (*See* ISE Rule 722(b)(1)). However, the specification in Rule 721(b)(2) that QCC orders ''may only be entered in the regular trading increments applicable to the options class under Rule 710'' would seem to overrule Rule 722(b)(2)'s statement regarding complex order increments, or at the very least, create a contradiction that requires clarification. Nonetheless, the Exchange has been informed by ISE market participants that ISE permits the trading of trading of [sic] QCC orders with multiple legs in $0.01 increments, regardless of the standard increments applicable to simple orders in the options class.

[12] *See* Footnote 11.

available publicly. All submissions should refer to File Number SR–CBOE–2013–041, and should be submitted on or before May 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08865 Filed 4–15–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8275]

The United States Advisory Commission on Public Diplomacy Notice of Charter Renewal

The Department of State has renewed the charter of the United States Advisory Commission on Public Diplomacy. The Commission was reauthorized by the Congress and the President under Section 1280 Public Law 112–239, signed into law on January 3, 2013. The Commission authorization is retroactive to October 1, 2010, and continues until October 1, 2015.

Since 1948, the Commission has been charged with appraising U.S. Government public diplomacy activities (activities intended to understand, inform, and influence foreign publics) and increasing the understanding of and support for these same activities. The Commission submits reports to the Congress, the President, and the Secretary of State on public diplomacy programs and activities; submits other reports as it deems appropriate to the Secretary of State, the President, and the Congress; and makes reports and other information available to the public in the United States and abroad, on the Commission's Web site or through other means.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission represent the public interest and are be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members can be from any one political party. The current members of the Commission are: William J. Hybl (Chairman), Sim Farar (Vice Chairman), Lyndon L. Olson, Penne Korth Peacock, Lezlee Westine, and Anne Terman Wedner. One position is vacant.

[13] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Bruce Armstrong, tel. 202–632–9930; *armstrongbw@state.gov*.

Dated: April 10, 2013.

Bruce Armstrong,

Staff Director for Resources, Office of the Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2013–08902 Filed 4–15–13; 8:45 am]

BILLING CODE 4710–44–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 13–02]

Sunshine Act Meetings

April 18, 2013.

The TVA Board of Directors will hold a public meeting on April 18, 2013, in the Cherry Theater of the Waymon L. Hickman Building, Columbia State Community College, 1665 Hampshire Pike, Columbia, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chairman's Welcome

Old Business

Approval of minutes of February 14, 2013, Board Meeting

New Business

1. Report from President and CEO
2. Report of the People and Performance Committee
3. Report of the External Relations Committee
   A. Stakeholder input on regional energy resource issues
4. Report of the Nuclear Oversight Committee
5. Report of the Finance, Rates, and Portfolio Committee
   A. Supplement to contract with Day and Zimmerman NPS, Inc., for generation modifications and supplemental maintenance services
   B. Ownership and financing arrangements for Southaven combined cycle plant
6. Report of the Audit, Risk, and Regulation Committee
   A. TVA regulatory policy
7. Information Item
   A. Clarification of Chief Executive Officer's authority to set compensation of managerial direct reports consistent with Board approved compensation plan

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: April 11, 2013.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2013–08989 Filed 4–12–13; 11:15 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Initiation of a Review of the Union of Burma and the Lao People's Democratic Republic for Possible Designation as Beneficiary Developing Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for submissions.

SUMMARY: This notice announces (1) the initiation of reviews to consider designation of the Union of Burma (Burma) and the Lao People's Democratic Republic (Laos) as beneficiary developing countries under the GSP program, and, if designated, whether either country should also be designated as a least-developed beneficiary developing country under GSP, and (2) the schedule for public comments and a public hearing relating to whether Burma and/or Laos meet the criteria for both designations.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Room 422, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov*.

DATES: May 17, 2013: Deadline for submission of comments, pre-hearing briefs, and requests to appear at the June 4, 2013 public hearing; submissions must be received by 5:00 p.m.

June 4, 2013: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on the GSP eligibility reviews of Burma and Laos at 1724 F Street NW., Washington, DC 20508, beginning at 9:00 a.m.

June 25, 2013: Deadline for submission of post-hearing briefs, which must be received by 5:00 p.m.

Background Information

The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended. It provides for duty free treatment of designated articles imported from any country that the President designates as a GSP ''beneficiary developing country.'' Additional trade benefits under the GSP are available to any country that the President also designates as a GSP ''least-developed beneficiary developing country.'' In designating countries as GSP beneficiary developing countries, the President must consider the criteria in sections 502(b)(2) and 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(b)(2), 2462(c)) (''the Act''), including definitions found in section 507 of the Act (19 U.S.C. 2467). When determining whether to designate a country as a least-developed beneficiary developing country, the President must consider the factors in sections 501 and 502(c) of the Act (19 U.S.C. 2461, 2462(c)). The relevant GSP provisions are available on the USTR Web site at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*.

Burma was previously designated a beneficiary developing country under GSP but its trade benefits under GSP were suspended, effective July 1, 1989, as a result of a presidential determination that the country was not meeting the statutory GSP eligibility requirements regarding internationally recognized worker rights. Laos has not previously been considered for eligibility for GSP trade benefits. The governments of Burma and Laos, respectively, have each recently informed USTR of their interest in being considered for designation as eligible for GSP trade benefits.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on Tuesday, June 4, 2013, beginning at 9:00 a.m., to receive information regarding the eligibility for GSP trade benefits of Burma and Laos. The hearing will be held at 1724 F Street NW., Washington, DC 20508 and will be open to the public and to the press. A transcript of the hearing will be made available on *http://www.regulations.gov* within approximately two weeks of the hearing.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' set out below, the name, address, telephone number, and email address, if available, of the witness(es) representing their organization by 5 p.m., May 17, 2013. Requests to present oral testimony must be accompanied by a written brief or summary statement, in English, and also must be received by 5 p.m., May 17, 2013. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the requirements set out below and are submitted, in English, by 5 p.m., June 25, 2013. Parties not wishing to appear at the public hearing may submit pre-hearing and post-hearing briefs or comments by the aforementioned deadlines.

The GSP Subcommittee strongly encourages submission of all post-hearing briefs or statements by the June 25, 2013 deadline in order to receive timely consideration in the GSP Subcommittee's review of GSP eligibility of Burma and Laos. However, if there are new developments or information that parties wish to share with the GSP Subcommittee after this date, the regulations.gov dockets will remain open until a final decision is made. Comments, letters, or other submissions related to the relevant country's eligibility review must be posted to the appropriate country-specific *http://www.regulations.gov* docket in order to be considered by the GSP Subcommittee.

Requirements for Submissions

All submissions in response to this notice must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*.

To ensure their timely and expeditious receipt and consideration, submissions in response to this notice must be in English and must be submitted electronically via *http://www.regulations.gov,* using docket number USTR–2013–0020 for Burma and docket number USTR–2013–0021 for Laos. Hand-delivered submissions will not be accepted.

To make a submission using *http://www.regulations.gov,* enter the country-specific docket number in the ''Search for'' field on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' in the ''Filter Results by'' section on the left side of the screen and click on the link entitled ''Comment Now.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. The GSP Subcommittee prefers that submissions be provided in an attached document. At the beginning of the submission, or on the first page (if an attachment), please note that the submission is in response to this **Federal Register** notice and provides comments on the possible designation of Burma or Laos as a beneficiary developing country or least-developed country beneficiary developing country for purposes of the GSP program. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov*. The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If an interested party is unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

An interested party requesting that information contained in a submission be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should

indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. For any submission containing business confidential information, a non-confidential version must be submitted separately (*i.e.,* not as part of the same submission with the confidential version), indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR § 2003.6, will be available for public viewing pursuant to 15 CFR § 2007.6 at *http://www.regulations.gov* upon completion of processing. Such submissions may be viewed by entering the country-specific docket number in the search field at *http://www.regulations.gov*.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2013–08813 Filed 4–15–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Oceana County Airport; Shelby, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Oceana County Airport, Shelby, Michigan. The proposal consists of 1.82 acres of airport property for which the current use and present condition is the Oceana County Animal Shelter.

DATES: Comments must be received on or before May 16, 2013.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174 or at Oceana County Airport, Shelby, Michigan. Written comments on the Sponsor's request must be delivered or mailed to: Diane Morse, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2929/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Diane Morse, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2929/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The subject land was acquired by Oceana County through the Federal Aid to Airport Program dated July 11, 1946. The Oceana County Board of Commissioners intends to purchase the property, at fair market value, for continued use by the animal shelter. The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. This notice announces that the FAA is considering the release of the subject airport property at Oceana County Airport, from all federal land covenants. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Following is a legal description of the property situated in the State of Michigan, County of Oceana, The North 297' of West 267' of Northeast quarter of Northwest quarter Section 3, Township 14 North, Range 17 West, Shelby Township, Oceana County, Michigan.

Legal Description of Property

Parcel is more particularly described as follows:

Part of the Northeast quarter of Northwest quarter of Section 3, Township 14 North, Range 17 West, Shelby Township, Oceana County, Michigan, described as: Commencing at the North quarter corner of Section 3; thence North 87°17′00″ West along the north section line 1051.69 feet to the point of beginning; thence South 01°59′25″ West parallel with and 267.00 feet easterly of the west 1/16 line for a distance of 297.02 feet; thence North 01°59′25″ East along the west 1/16 line 297.02 feet; thence South 87°17′00″ East along the north section line 267.02 feet to the point of beginning. Contains 1.82 acres more or less. Together with and subject to covenants, easements, and restrictions of record.

Issued in Detroit, Michigan, on March 7, 2013.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2013–08828 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Feeeman Municipal Airport, Seymour, Indiana.

SUMMARY: The FAA is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use at the Freeman Municipal Airport in Seymour, Indiana. The proposal consists of approximately 2.14 acres located outside the fenced in portion of airport property. The property contains a single building that is currently unoccupied, but has been used for residential and business purposes in the past. It is the intent of the Seymour Airport Authority, as owner and operator of the Freeman Municipal Airport (SER) to sell the entire 2.14 acres, including the building. The land is not needed for aeronautical use, and will be sold for use as an aviation related business office.

DATES: Comments must be received on or before May 16, 2013.

ADDRESSES: Documents are available for review by appointment at the FAA Airports District Office, Bobb Beauchamp, Environmental Protection Specialist, Chicago Airports District Office, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7364/FAX Number (847) 294–7046. Written comments on the Sponsor's request must be delivered or mailed to:

Bobb Beauchamp, Environmental Protection Specialist, Federal Aviation Administration, Airports District Office, 2300 E. Devon Avenue, Des Plaines, Illinois, 60018, Telephone Number: (847) 294–7364/FAX Number (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Bobb Beauchamp, Environmental Protection Specialist, Chicago Airports District Office, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois, 60018. Telephone Number (847) 294–7364/FAX Number (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with Section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land was acquired via quitclaim deed from the United States Department of Defense dated December 9, 1948. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696). There are no impacts to the airport by allowing the airport to sell the property. This notice announces that the FAA is considering the release of the subject property at the Freeman Municipal Airport, Seymour, Indiana from all Federal land covenants. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Following is a legal description of the property: Part of the southeast quarter of Section 30, Township 5 north, Range 6 east, and part of the northeast quarter of Section 31, Township 6 north, Range 6 east, lying in Jackson County, Indiana.

Beginning at a steel pin in concrete (found) in State Road 11, marking the southeast corner of Section 30; thence north 01′23′48′ west along the east line of said Section 30 a distance of 170.29 feet to a mag nail (set); thence south 88′32′34′ west a distance of 295.36 feet to a 5⁄8″ capped rebar (set); thence south 00′21′39′ east a distance of 316.68 feet to a 5⁄8″ capped rebar (set); thence north 88′32′34′ east a distance of 301.24 feet to the east line of Section 31, State Road 11 and a mag nail (set); thence 01′27′26′ west along said east line and said road a distance of 143.34 feet to the point of beginning, containing 2.14 acres more or less and subject to all legal rights and way and easements.

Issued in Des Plaines, Illinois, on March 25, 2013.

Jack Delaney,

Acting Manager, Chicago Airports District Office FAA, Great Lakes Region.

[FR Doc. 2013–08822 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2003–14233; FMCSA–2004–17984; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–22727; FMCSA–2007–27333; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0321; FMCSA–2010–0385; FMCSA–2011–0010]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 38 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 7, 2013. Comments must be received on or before May 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2003–14233; FMCSA–2004–17984; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–22727; FMCSA–2007–27333; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0321; FMCSA–2010–0385; FMCSA–2011–0010], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008, 73 FR 3316.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers

of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 38 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 38 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Rex A. Botsford (MI)
Benny J. Burke (AL)
Curtis F. Caddy, III (CA)
William D. Cardiff (IL)
Roger C. Carson (IN)
Dan B. Clark (OH)
Gregory L. Cooper (PA)
Kenneth D. Craig (VA)
Terry J. Dare (IN)
Vincent C. Durazzo, Jr. (CT)
Jerald O. Edwards (ID)
Breck L. Falcon (LA)
Kenneth Flack, Jr. (AL)
Maylin E. Frickey (OR)
David R. Gross (PA)
Larry M. Hawkins (AZ)
Wesley J. Jenkins (IL)
Francisco J. Jimenez (TX)
Christopher J. Kane (VT)
Kenneth C. Keil (CA)
Melvin A. Kleman (OH)
Michael Lafferty (ID)
Roosevelt Lawson (AL)
Eugene R. Lydick (VA)
Emanuel N. Malone (VA)
Roberto E. Martinez (WA)
Thomas E. Moore (PA)
Travis W. Neiwert (ID)
Bernard J. Phillips (WA)
Duane L. Riendeau (ND)
James A. Smith (WA)
Clarence L. Swann, Jr. (AL)
Michael G. Trueblood (IL)
Donald A. Uplinger, II (OH)
Kerry W. VanStory (TX)
Steven M. Vujicic (IL)
Joseph Watkins (MI)
James H. Williams, Jr. (WI)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 38 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (57 FR 57266; 63 FR 66226; 64 FR 16517; 65 FR 57230; 65 FR 78256; 66 FR 16311; 66 FR 17994; 67 FR 76439; 68 FR 10298; 68 FR 10301; 68 FR 13360; 68 FR 15037; 68 FR 19596; 69 FR 33997; 69 FR 61292; 69 FR 62741; 69 FR 64806; 70 FR 12265; 70 FR 16886; 70 FR 16887; 70 FR 2701; 70 FR 2705; 70 FR 7543; 70 FR 71884; 71 FR 4632; 71 FR 62147; 72 FR 184; 72 FR 5489; 72 FR 11425; 72 FR 11426; 72 FR 12666; 72 FR 18726; 72 FR 25831; 73 FR 6246; 73 FR 20245; 73 FR 75806; 74 FR 7097; 74 FR 8842; 74 11988; 74 FR 11991; 74 FR 15584; 74 FR 15586; 74 FR 21427; 74 FR 21796; 75 FR 1835; 75 FR 9482; 75 FR 77942; 76 FR 5425; 76 FR 9856; 76 FR 15361; 76 FR 20076; 76 FR 21796). Each of these 38 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 16, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 38 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: April 3, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–08878 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0026]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 7 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before May 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0026 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 7 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Fred Boggs

Mr. Boggs, age 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''It is my professional opinion that Mr. Boggs has sufficient vision to operate a commercial vehicle without any concern of restrictions.'' Mr. Boggs reported that he has driven straight trucks for 10 years, accumulating 600,000 miles, and tractor-trailer combinations for 10 years, accumulating 600,000 miles. He holds a Class A Commercial Driver's License (CDL) from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Del Sasso

Mr. Del Sasso, 48, has had a macular pucker in his left eye since 2000. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2012, his ophthalmologist noted, ''He may have possible depth perception issues with driving, or other visually-related tasks, but I feel he should have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Del Sasso reported that he has driven straight trucks for 2 years, accumulating 100,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.9 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 13 mph.

Stephen R. Dykstra

Mr. Dykstra, 58, has had a scarred corneal retinal detachment in his right eye due to a traumatic incident 21 years ago. The best corrected visual acuity in his right eye is hand motion, and in his left eye, 20/30. Following an examination in 2012, his optometrist noted, ''Unless driving record would suggest otherwise, I do not feel that this vision impairment would prevent him from being able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dykstra reported that he has driven straight trucks for 5 years, accumulating 40,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.05 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Troy A. Gray

Mr. Gray, 26, has had amblyopia in his left eye since early childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2012, his optometrist noted, ''I certify that, in my medical opinion, Troy Gray has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gray reported that he has driven straight

trucks for 5 years, accumulating 25,000 miles. He holds a chauffeur's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Darryl W. Hardy

Mr. Hardy, 46, has had toxoplasmosis in his right eye since birth. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''In my medical opinion, I certify the Mr. Hardy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hardy reported that he has driven straight trucks for 7.5 years, accumulating 41,250 miles, and tractor-trailer combinations for 21 years, accumulating 115,500 miles. He holds a Class B CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George E. Mulherrin, III

Mr. Mulherrin, 51, has had a prosthetic left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his ophthalmologist noted, ''George E. Mulherrin, III has mononocular visual function using the right eye which is adequate to operate a commercial vehicle.'' Mr. Mulherrin reported that he has driven straight trucks for 22 years, accumulating 594 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nathan G. Pettis

Mr. Pettis, 33, has had choroidal melanoma in his left eye since 2005. The best corrected visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2012, his optometrist noted, ''Based on his driving history and the way he has compensated for the vision loss, I am convinced Mr. Pettis, in my medical opinion, can operate a commercial vehicle safely.'' Mr. Pettis reported that he has driven straight trucks for 14 years, accumulating 350,000 miles, and tractor-trailer combinations for 14 years, accumulating 770,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 16, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–08880 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2013–0016]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0016 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a

level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 16 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Joseph J. Black

Mr. Black, 60, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Black understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Black meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Donald D. Boomgaarn

Mr. Boomgaarn, 46, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boomgaarn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Boomgaarn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Hilary C. Clarke

Mr. Clarke, 43, has had ITDM since 2009. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Clarke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clarke meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Roger S. Davis

Mr. Davis, 55, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Edgar I. Duque

Mr. Duque, 49, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duque understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duque meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New York.

Kevin D. Gentes

Mr. Gentes, 24, has had ITDM since 1996. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gentes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gentes meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Illinois.

Roger J. Huffsmith

Mr. Huffsmith, 48, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Huffsmith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huffsmith meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Joel M. Jock

Mr. Jock, 51, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined

him in 2012 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

James S. Marunczak

Mr. Marunczak, 40, has had ITDM since 2010. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marunczak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Marunczak meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

William A. Nearhood

Mr. Nearhood, 52, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nearhood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nearhood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Charles E. Peck

Mr. Peck, 66, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Joseph Sawicki, III

Mr. Sawicki, 25, has had ITDM since 1997. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sawicki understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sawicki meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class DL operator's license from New York.

Michael Steinman

Mr. Steinman, 59, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Steinman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steinman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Christopher T. Thieneman

Mr. Thieneman, 25, has had ITDM since 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thieneman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Thieneman meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

Matthew A. Waller

Mr. Waller, 53, has had ITDM since 1988. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Waller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable non-proliferative diabetic retinopathy. He holds an operator's license from Washington.

Lucas P. Walth

Mr. Walth, 27, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walth meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: April 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–08881 Filed 4–15–13; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0022]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 21 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 16, 2013. The exemptions expire on April 16, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR–2010–12–29/pdf/2010–32876.pdf.*

Background

On February 25, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 12815). That notice listed 21 applicants' case histories. The 21 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 21 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 21 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including complete loss of vision, a choroidal rupture, nerve damage, amblyopia, a retinal

detachment, a retinal scar, a macular hole, a prosthetic eye, a macular scar, choroidal atrophy, a corneal scar, optic nerve atrophy, a parafoveal scar, aphakia, and refractive amblyopia. In most cases, their eye conditions were not recently developed. Fourteen of the applicants was either born with their vision impairments or have had them since childhood.

The seven individuals that sustained their vision conditions as adults have had it for a period of 4 to 29 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 21 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 41 years. In the past 3 years, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 25, 2013 notice (78 FR 12815).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 21 applicants, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 21 applicants listed in the notice of February 25, 2013 (78 FR 12815).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 21

individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received two comments in this proceeding. The comments are considered and discussed below.

The Pennsylvania Department of Transportation is in favor of granting exemptions to David B. Bowman and Matthew J. Hahn after reviewing their driving histories. Camille Myers stated the importance of standardized visual testing for all drivers when licenses are renewed.

Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts Keith Bell (FL), Russell A. Bolduc (CT), David B. Bowman (PA), Ronnie Clark (ME), Earl R. Gould, Jr. (NY), Matthew J. Hahn (PA), Terry R. Hunt (FL), Sebastian G. Jachymiak (IL), James P. O'Berry (GA), Mark A. Omps (WV), Gerson Lopez-Padilla (CT), Jerry D. Paul (AR), Larry B. Peterson (AR), Franklin P. Reigle, III (MD), Phillip Schaub (CO), Reginald Smart (TX), George Stapleton (GA), Mark E. Studer (KS), James K. Waites (AR), Scott Wallbank (MA), and Michael D. Zecha (KS) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–08879 Filed 4–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of Engraving and Printing is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and the Office of Management and Budget Circular No. A–130, the Bureau of Engraving and Printing (BEP) has completed a review of its Privacy Act system of records notices to identify minor changes that will more accurately describe these records. The changes throughout the document are editorial in nature and consist primarily of corrections to citations, updates to addresses, and clarifications to the storage, retrievability, safeguards, retention and disposal and individuals or records covered.

One new system of records has been published in the BEP inventory of Privacy Act notices. That system is identified below:

Treasury/BEP .048 Electronic Police Operations Command Reporting System (EPOCRS)—Treasury/BEP (Published August 25, 2010, at 75 F.R. 52394)

The following three systems of records maintained by the BEP were amended:

1. Treasury/BEP .006. Debt Files (Employees)—Treasury/BEP (Published December 30, 2009, at 74 F.R. 69190).

2. Treasury/BEP .027. Access Control and Alarm Monitoring Systems (ACAMS)—Treasury/BEP (Published January 5, 2012, at 77 F.R. 551).

3. Treasury/BEP .021. Investigative Files—Treasury/BEP (Published January 6, 2012, at 77 F.R. 837).

Systems Covered by This Notice

This notice covers all systems of records adopted by the Bureau of Engraving and Printing up to August 25, 2010. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: April 9, 2013.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

Bureau of Engraving and Printing (BEP)

Table of Contents

TREASURY/BEP .002

SYSTEM NAME:

Personal Property Claim File—Treasury/BEP

SYSTEM LOCATION:

Office of the Chief Counsel, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Office of the Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian officers, employees, and former employees of the Bureau of Engraving and Printing, and their survivors having claims for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal property damage claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721, as amended.

PURPOSE(S):

The purpose of this system is to permit the Bureau of Engraving and Printing to more effectively and efficiently process and manage claims, and to provide statistics that allow us to focus our resources in order to continually improve the safety of our workforce, work environment, and equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the stored information. Access to the electronic and paper record system is limited to the staff of the Office of the Chief Counsel who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 18, records are destroyed when two (2) years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Chief Counsel, Bureau of Engraving and Printing, Eastern Currency Facility, 14th and C Streets SW., Washington, DC 20228 and Manager, Office of the Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F, to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals having claim for damage to or loss of personal property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .004

SYSTEM NAME:

Counseling Records—Treasury/BEP.

SYSTEM LOCATION:

Office of Equal Opportunity and Diversity Management, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees of the Bureau of Engraving and Printing who have received counseling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence relative to counseling information and follow-up reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To provide a history and record of the employee counseling session.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or

foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, contingent upon that individual signing a release of information form;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide general educational information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on file folders, magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to the individuals in the Office of Equal Opportunity and Diversity Management, who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The Office of Human Resources, Employee & Labor Management Relations Division will have access the electronic and paper record system in the event of disciplinary action.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration (NARA), General Records Schedule No. 1, records are destroyed three (3) years after termination of counseling.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Equal Opportunity and Diversity Management, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F, to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .005

SYSTEM NAMES:

Compensation Claims—Treasury/BEP.

SYSTEM LOCATION:

Office of Human Resources, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees and former employees who file claims for work-connected injuries or illnesses under the Federal Employee Compensation Act for medical expenses, lost wages, leave buy-back, and scheduled awards continuation of pay or disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pertinent documentation, including investigative reports, medical reports, forms, letters, Department of Labor Office of Workers' Compensation (DOL–OWCP) letters, relative to work-connected injuries or illnesses of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act, as amended, 5 U.S.C. 8101 et seq., 20 CFR Part 10.

PURPOSES:

The purpose of this system is to permit the Bureau of Engraving and Printing to more effectively and efficiently process and manage claims, and to provide statistics and information to the Department of Labor Office of Workers' Compensation (DOL–OWCP). It also allows us to focus our resources in order to continually improve the safety of our workforce and work environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USER AND THE PURPOSES OF SUCH USER:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an

indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(9) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name and date of injury.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper records system is limited to those individuals from the Office of Human Resources who have a need to know the information for performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 1, records are destroyed three (3) years after cutoff on termination of compensations or when the deadline for filing has passed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Human Resources Officer, Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Occupational health unit daily reports, medical providers, supervisors' reports, and employee-provided information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .006

SYSTEM NAME:

Debt Files of Employees—Treasury/BEP.

SYSTEM LOCATION:

Office of Human Resources and Office of the Chief Counsel, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Human Resources Management Division and Office of the Chief Counsel, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Bureau of Engraving and Printing against whom garnishment proceedings or debt complaints have been filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain correspondence; complaint information, including counseling efforts and final disposition of complaints; court judgments; writs, orders, summons, or other legal process in the nature of garnishment; child support account numbers; names and addresses of current employers of former agency employees; and records on current or former employees to include name, Social Security number, address, phone number, position, wages, and employment benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5520a, 31 U.S.C. 321, 42 U.S.C. 659, 44 U.S.C. 3101, and Exec. Order No. 9397.

PURPOSES:

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States of America, through one or more of its departments and agencies, and/or to individuals, including past due support enforced by states. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, offset, levy, and administrative wage garnishment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to a court of competent jurisdiction, an authorized official or authorized state agency as defined in 5 CFR parts 581, 582, or a party to a garnishment action, in response to legal process, including interrogatories, served on the Bureau of Engraving and Printing in connection with garnishment proceedings against a current or former employee; and

(11) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals in the Office of Human Resources and Office of the Chief Counsel who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 2, records are destroyed three (3) years after garnishment is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources and Chief Counsel, Office of the Chief Counsel, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Human Resources Officer, Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F, to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Employees, complainants, creditors, court judgments, garnishment orders, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP.014

SYSTEM NAME:

Employee's Production Record—Treasury/BEP.

SYSTEM LOCATION:

All Bureau of Engraving and Printing Organizational Components, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the Bureau of Engraving and Printing, Eastern and Western Currency Facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Employee's name;
- Dates;
- Work hours;
- Record of production;
- History of work assignments;
- Training;
- Work performance;
- Progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 4103, 4302.

PURPOSES:

The purpose of this system is to permit the Bureau of Engraving and

Printing to maintain performance records used to support awards, promotions, performance-based actions, training, and other personnel actions, and to track and evaluate performance based upon the accomplishments of each employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name and work code number, and cross-referenced by project number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper records system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228: Director, Office of Director; Deputy Director, Office of Deputy Director; Chief Counsel, Office of the Chief Counsel; Chief, Office of External Affairs; Associate Director-Chief Financial Officer including: Chief-Office of Financial Management, Chief-Office of Acquisition, and Chief-Office of Compliance; Associate Director, Eastern Currency Facility including: Chief-Office of Engraving, Chief-Office of Security Printing, and Chief-Office of Operations Support; Associate Director, Product & Technology Development including: Deputy Associate Director-Product & Technology Development, Chief-Office of Product Development, Chief-Office of Materials Technology, Chief-Office of Engineering, and Chief-Central Bank Liaison Staff; Associate Director-Management including: Chief-Office of Security, Chief Office of Human Resources, Chief-Office of Facilities Support, Chief-Office of Environmental Health & Safety, and Chief-Office of Equal Opportunity & Diversity Management; Associate Director-Chief Information Officer including: Chief-Office of Critical Infrastructure & IT Security, Chief-Office of IT Operations, and Chief-Office of Enterprise Solutions; Associate Director- Corporate Planning & Strategic Analysis including: Chief-Office of Strategic Systems Management, Chief-Office of Quality, Chief-Office of Order Management & Delivery Systems, and Chief-Office of Portfolio & Project Management.

Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131: Associate Director-Western Currency Facility including: Chief-Office of Currency Manufacturing, Chief, Office Operations Support Division, Security Officer-Security Division, and Human Resources Officer-Human Resources Management Division.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information furnished by employee, developed by supervisor, or by referral document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .016

SYSTEM NAME:

Employee Suggestions—Treasury/BEP.

SYSTEM LOCATION:

Office of Human Resources, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees submitting suggestions under the incentive award program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's suggestion, reviewer evaluation, and final disposition information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4502(c).

PURPOSES:

The purpose of this system is to permit the Bureau of Engraving and Printing to maintain records on the suggestions submitted by employees and used to support awards if the suggestions are adopted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals in the Office of Human Resources who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Human Resources Officer-Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employee, employee's supervisor, and review committee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .020

SYSTEM NAME:

Industrial Truck Licensing Records—Treasury/BEP.

SYSTEM LOCATION:

Office of Environment, Health, and Safety, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Office of Operations Support, Environment, Health & Safety Branch, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees designated to operate self-

propelled material and/or machinery handling equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of employee physical examination, testing, license number and issue date for purposes of operating one or more types of material handling equipment used within the Bureau of Engraving and Printing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

This system of records is used to document who is authorized to operate self-propelled material and/or machinery handling equipment. In addition, it keeps track of the expiration dates of the licenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals from the Office of Environment, Health, and Safety in the Eastern and Western Currency Facilities who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 10, records are destroyed three (3) years after separation of employee or three (3) years after rescission of authorization to operate Government-owned vehicle, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environment, Health, and Safety, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Chief, Office of Operations Support, Environment, Health & Safety Branch, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Supervisor's request, results of physical examination, and data obtained during training or practical tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .021

SYSTEM NAME:

Investigative Files—Treasury/BEP.

SYSTEM LOCATION:

Office of Security, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current BEP employees, contractors, and service company employees, applicants for employment, visitors to BEP, news-media correspondents, and employees or contractors of companies to which samples or test decks of Federal Reserve notes or other Government securities are supplied.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Security files;
- Personnel clearance requests;
- Case files;
- Bank shortage letters;
- Contractor files;
- Currency discrepancy reports;
- Intelligence files;
- Stamp discrepancy reports;
- Case records;
- Correspondence from the public concerning security matters;
- Security Files Reference Record;
- Employee Indebtedness Record.

Type of Information:

- Passport numbers;
- Character references;
- Police force reports;
- Previous employment verification;
- Newspaper articles;
- Social Security numbers;
- Laboratory reports to include handwriting results and latent fingerprint examinations;
- Law enforcement criminal and subversive record checks;
- Court records;
- Security register;
- Residency information;
- Reports of shortages or thefts of Bureau products including subsequent investigations;
- Personnel records of various types;
- Fingerprint card, photograph;
- Names of individuals including those at contractor plants who worked on a shortage involving Bureau products;
- Credit checks;
- Background investigation reports conducted by Office of Personnel Management, Bureau of Engraving and Printing, the Internal Revenue Service, and other Federal Investigative Agencies
- Disciplinary action recommended and/or received;
- Military record forms and extracted information;
- List of Bureau employees granted security clearances;
- Processes served (e.g., summons, subpoenas, warrants);

- Personnel security case numbers, dates—case opened and closed, and recommendations;
- Certificate of Security Clearance;
- Reports of violations of Bureau regulations and procedures;
- Bureau visitor control documents;
- Correspondence relating to individuals;
- Claims of indebtedness from firms and collection agencies and other sources, and assorted documents, recorded audio or video testimony;
- Bureau investigation reports, information supplied by Law Enforcement agencies;
- Applicant interview record;
- Anonymous tips concerning Bureau employees;
- Official investigative statements;
- Names of those requesting security assistance and report of the assistance rendered;
- Other pertinent Governmental records;
- Education records and information;
- Date of birth and physical description of individual in the files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, Exec. Order No. 10,450, and implementing Treasury and Bureau Regulations.

PURPOSES:

This system is to permit the Bureau of Engraving and Printing to collect and maintain background investigation records on applicants for employment, current Bureau employees, and contractors for issuance of security clearances; visitors seeking access to Bureau facilities; and those to whom samples or test decks of Federal Reserve notes or other Government securities are supplied. Information is also collected as part of investigations conducted by the Bureau's Office of Security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(9) Provide to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved alphabetically by name and company name, and numerically by case number, passport number, Social Security number, and year.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper records system is limited to those individuals in the Office of Security in the Eastern and Western Currency Facilities who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 18.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets, SW., Washington, DC 20228 and Security Officer, Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The sources of the information are the individual concerned and information supplied by federal, state, and local investigative agencies, credit bureaus, financial institutions, court records, educational institutions, and individuals contacted concerning the person being investigated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and 31 CFR 1.36.

TREASURY/BEP .027

SYSTEM NAME:

Access Control and Alarm Monitoring Systems (ACAMS)—Treasury/BEP.

SYSTEM LOCATION:

Office of Security, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Bureau of Engraving and Printing; employees of other U.S. Government agencies, contractors, and service company employees who have been cleared for access to the Bureau of Engraving and Printing and issued BEP Access Badges; and escorted visitors (i.e., contractors and service company employees who have not undergone the formal clearance to enter the Bureau of Engraving and Printing).

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) The following information is maintained concerning all individuals who are issued BEP access badges with photographs: photograph; full name; Social Security number; date of birth; badge number; supervisory status; work telephone; work area number; BEP access clearance level; date BEP access level granted; date last security background investigation was completed; BEP access level; BEP access time zone; date access badge issued; date access badge voided; and time, date, and location of each passage through a security control point, (B) In the case of BEP employees and contractors issued ''Temporary Access'' badges and contractors and others issued ''No Escort'' badges, in lieu of his/her BEP access badge with photograph, the same information as in paragraph A (above) is kept, and (C) BEP ACAMS maintains the following information on official visitors, contractors, and others issued ''Escort Visitor'' badges: photograph; full name; date of birth; home address; driver's license number; passport number and date of issue; and date, time, and location of each passage through a security control point; and any additional data contained on an identification card presented when seeking an Escort Visitor badge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, 5 U.S.C. 301, 6106.

PURPOSES:

The purpose of this system is to maintain a record of those persons who entered the Bureau of Engraving and Printing premises and the time and areas visited for internal security use. This system of records is used to assist in maintaining the security of the Bureau premises and to permit the identification of individuals on the premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(9) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on computer printouts, magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved numerically by PASS/badge number, alphabetically by last name, and appropriate index by subject.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access is limited to the Office of Security, Eastern Currency Facility and Security Division, Western Currency Facility. On-line terminals are installed in a locked 24-hour manned Central Police Operations Center and the Security Systems Operations Center (SSOC) at the Eastern Currency Facility. These terminals are on lines that can be manually activated and deactivated in the Security Systems Operations Center (SSOC).

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with BEP Records Retention and Disposal Schedule No. 8 (N1/318/04/8) as required by the National Archives and Records Administration (NARA). For official visitors, contractors, and others issued ''Escort Visitor'' badges, information other than name and photograph scanned from identification cards is disposed of immediately upon collection.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Security Officer, Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Eastern Currency Facility, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .035

SYSTEM NAME:

Tort Claims against the United States of America—Treasury/BEP.

SYSTEM LOCATION:

Office of the Chief Counsel, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Office of the Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or organizations making claim for money damage against the United States of America for injury to or loss of property or personal injury or death caused by neglect, wrongful act, or omission of a Bureau of Engraving and Printing employee while acting within the scope of his office or employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal injury and/or property damage claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2672.

PURPOSES:

This system of records is used by the Bureau of Engraving and Printing to track the claims submitted, including their progress, adjudication, and final disposition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(7) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals in the Office of the Chief Counsel who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are to be retained and disposed in accordance with BEP Records Retention and Disposal Schedule No. 3 (N1/318/04/3) as required by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of the Chief Counsel, Bureau of Engraving and Printing,

Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Office of the Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual or organization's claim and/or investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .038

SYSTEM NAME:

Unscheduled Absence Record—Treasury/BEP.

SYSTEM LOCATION:

Office of Human Resources, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Bureau of Engraving and Printing who have had unscheduled absences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains chronological documentation of unscheduled absences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

To provide a history and a record of the employee's unscheduled absences.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(7) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to the supervisor's employee and authorized timekeeping personnel who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228 and Human Resources Officer, Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employee's time and attendance records and his/her supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .041

SYSTEM NAME:

Record of Discrimination Complaints—Treasury/BEP.

SYSTEM LOCATION:

Office of Equal Opportunity and Diversity Management, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Bureau of Engraving and Printing who have initiated discrimination complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data developed as a result of inquiry by the person making the allegation of discrimination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Exec. Order No. 11,478.

PURPOSES:

To provide a history and record of the employee counseling session. Documentation of all statements made will be kept for use in the resolution of the case and forwarded, if need be, to the Equal Employment Opportunity Commission (EEOC).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose to EEOC to adjudicate discrimination complaints;

(2) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name and case number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to complainants and individuals from the Office of Equal Opportunity and Diversity Management who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Equal Opportunity and Diversity Management, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F, to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employees who have discrimination complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .045

SYSTEM NAME:

Mail Order Sales Customer Files—Treasury/BEP

SYSTEM LOCATION:

Office of External Relations, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228 and External Affairs Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers ordering engraved prints and numismatic products from the

Bureau of Engraving and Printing through the mail, and those individuals who have requested that their names be placed on the BEP mailing list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mail order customers' names; addresses; company names; credit card numbers and expiration dates; history of customer sales; and inventory data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

The purpose of this system is to permit the Bureau of Engraving and Printing to maintain a mailing list of customers and interested parties to provide continuous communication and/or promotional materials about existing and upcoming product offerings; to record and maintain records of customer, interested party, and order information and requests for promotional materials; and to capture orders through each stage of the order life cycle, research and resolve orders that were not successfully delivered to customers and interested parties, and maintain a list of its products and to monitor and maintain product and promotional material inventory levels to meet customer and interested party demand.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To electronically transmit credit card information to obtain approval or disapproval from the issuing financial institution. Categories of users include personnel involved in credit card approval; and

(2) To inform appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(3) To disclose to consumer reporting agencies any debt information concerning a Government claim against an individual in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by customer name, order number, or customer number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals in the Office of External Relations who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with BEP Records Retention and Disposal Schedule No. 21 (N1/318/04/21) approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Office of External Relations, Marketing Division, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228 and Manager, WCF External Affairs Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility. 14th & C Streets SW., Washington, DC 20228.

RECORDS ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Customers, BEP employees, financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking System—Treasury/BEP.

SYSTEM LOCATION:

Office of Financial Management, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions submitting mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amounts of claims, amounts paid, and types and conditions of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 12 U.S.C. 413, 31 U.S.C. 321.

PURPOSES:

The purpose of this system is to maintain historical information and to respond to claimants' inquiries (e.g., non-receipt of reimbursement, status of case).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to

the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(8) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by claimant name, case number, address, or registered mail number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals in the Office of Financial Management who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with BEP Records Retention and Disposal Schedule No. 10 (N1/318/04/10) approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Financial Management, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions, and BEP employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .047

SYSTEM NAME:

Employee Emergency Notification System—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Bureau of Engraving and Printing who have voluntarily provided personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected by this system are necessary to ensure the timely emergency notification to individuals that employees have identified. The types of personal information presently include or potentially could include the following:

(a) Personal identifiers (name; home, work, and email addresses; telephone, fax, and pager numbers);

(b) Emergency notification contact (name of person to be notified; address; telephone number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 5 U.S.C. 301.

PURPOSES:

The purpose of this system of records is to provide emergency notification to those person(s) employees have voluntarily designated to receive such information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure

facilities in a locked drawer behind a locked door. The records are stored in file folders and on electronic media.

RETRIEVABILITY:

Records may be retrieved by name or other unique identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper record system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration (NARA), General Records Schedule No. 1-Item 18 (a), records are reviewed and destroyed annually when the records are superseded or obsolete. The file relating to a former employee is destroyed within one (1) year after separation or transfer.

SYSTEM MANAGER(S) AND ADDRESS:

Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228: Director, Office of Director; Deputy Director, Office of Deputy Director; Chief Counsel, Office of the Chief Counsel; Chief, Office of External Affairs; Associate Director-Chief Financial Officer including: Chief-Office of Financial Management, Chief-Office of Acquisition, and Chief-Office of Compliance; Associate Director, Eastern Currency Facility including: Chief-Office of Engraving, Chief-Office of Security Printing, and Chief-Office of Operations Support; Associate Director, Product & Technology Development including: Deputy Associate Director-Product & Technology Development, Chief-Office of Product Development, Chief-Office of Materials Technology, Chief-Office of Engineering, and Chief-Central Bank Liaison Staff; Associate Director-Management including: Chief-Office of Security, Chief Office of Human Resources, Chief-Office of Facilities Support, Chief-Office of Environmental Health & Safety, and Chief-Office of Equal Opportunity & Diversity Management; Associate Director-Chief Information Officer including: Chief-Office of Critical Infrastructure & IT Security, Chief-Office of IT Operations, and Chief-Office of Enterprise Solutions; Associate Director-Corporate Planning & Strategic Analysis including: Chief-Office of Strategic Systems Management, Chief-Office of Quality, Chief-Office of Order Management & Delivery Systems, and Chief-Office of Portfolio & Project Management.

Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131: Associate Director-Western Currency Facility including: Chief-Office of Currency Manufacturing, Chief, Office Operations Support Division, Security Officer-Security Division, and Human Resources Officer-Human Resources Management Division.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

BEP Employees.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .048

SYSTEM NAME:

Electronic Police Operations Command Reporting System (EPOCRS)—Treasury/BEP.

SYSTEM LOCATION:

Office of Security, Bureau of Engraving and Printing, Eastern Currency Facility, 14th & C Streets SW., Washington, DC 20228, and Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Eastern and Western Currency Facilities of the Bureau of Engraving and Printing, employees of other U.S. government agencies, contractors, service company employees, and visitors who have provided information to BEP police officers relating to an incident or accident at a BEP facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained in this system includes electronic and paper records of criminal/administrative incidents and/or general complaints/concerns reported to the BEP Police Services Division that require investigation, response, and reporting for purposes of administrative processing activity at the Bureau. Information that will be collected and maintained includes personal information such as names, addresses, telephone numbers, dates of birth, property information (such as vehicular brand, model, or other identifying data), notification information, narratives, voluntary statements, images, witnesses, and locations of the incidents).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552(a)b, 31 U.S.C. 321, 40 U.S.C. 1315(b)(2)(a–c).

PURPOSES:

The purpose of the system is to establish a database for records regarding investigation activity that directly or indirectly impacts BEP persons and property. Records are of an administrative and/or investigative nature involving the BEP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

These records may be used to disclose information to:

(1) Appropriate federal, state, and local agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a court order, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904, 2906;

(5) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the Department deems DOJ's use of such information relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component of it;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components; and

(6) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Records may be retrieved by name of the individual(s) involved in the incident, date(s) of the incident, and by system generated report numbers.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the electronic and paper records system is limited to those individuals in the Office of Security, Office of Compliance and Office of Critical Infrastructure & IT Security of the Eastern Currency Facility and Security Division of the Western Currency Facility who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with BEP Records Retention and Disposal Schedule No. 8 (N1/318/04/8) approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Eastern Currency Facility, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228 and Security Officer, Security Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit written inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. to the Disclosure Officer, Bureau of Engraving and Printing, 14th & C Streets SW., Washington, DC 20228.

RECORD ACCESS:

See ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

See ''Notification procedure.''

RECORD SOURCE CATEGORIES:

(1) BEP employees, (2) individuals directly or indirectly involved in an incident, (3) authorized officials or legal representatives of such individuals, or (4) legal representatives of firms, companies, or agencies directly or indirectly involved in an incident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–08849 Filed 4–15–13; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals and seven entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the three individuals and seven entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on April 9, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement

Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On April 9, 2013, the Director of OFAC designated the following three individuals and seven entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. HANDAL PEREZ, Jose Miguel (a.k.a. ''CHEPE HANDAL''; a.k.a. ''CHEPITO HANDAL''), Col Bella Vista, Casa No. 09, Camino a Rotulo de Coca Cola, San Pedro Sula, Cortes, Honduras; DOB 14 May 1974; POB Honduras; nationality Honduras; citizen Honduras; National ID No. 0501–1974–03523 (Honduras); Tax ID No. ERQ1IZE (Honduras) (individual) [SDNTK] (Linked To: CORPORACION HANDAL S. DE R.L.; Linked To: EASY CASH S. DE R.L.; Linked To: AUTO PARTES HANDAL S. DE R.L. DE C.V.; Linked To: SUPERTIENDAS HANDAL S. DE R.L.; Linked To: JM TROYA).

2. HANDAL LARACH, Jose Miguel, San Pedro Sula, Cortes, Honduras; DOB 18 Jan 1941; citizen Honduras; National ID No. 0401–1941–00086 (Honduras) (individual) [SDNTK] (Linked To: AUTO PARTES HANDAL S. DE R.L. DE C.V.; Linked To: RANCHO LA HERRADURA; Linked To: SUPERTIENDAS HANDAL S. DE R.L.).

3. HERNANDEZ AMAYA, Ena Elizabeth (a.k.a. DE HANDAL, Ena), San Pedro Sula, Cortes, Honduras; DOB 03 Sep 1978; nationality Honduras; National ID No. 0501–1978–08173 (Honduras) (individual) [SDNTK] (Linked To: J & E S. DE R.L. DE C.V., a.k.a. CLEOPATRA's).

Entities

1. AUTO PARTES HANDAL S. DE R.L. DE C.V. (a.k.a. APH S. DE R.L. DE C.V.; a.k.a. SUPERTIENDAS & AUTO PARTES HANDAL), 3 Ave y 14 Calle N.O., Barrio Las Acacias, Apartado Postal No 1018, San Pedro Sula, Cortes, Honduras; 14 de Julio, La Ceiba, Atlantida, Honduras; Ave Junior, Entre 7 y 6 Calle Sureste, San Pedero Sula, Cortes, Honduras; Tax ID No. 3ET38QN (Honduras); alt. Tax ID No. 05019001468346 (Honduras) [SDNTK].

2. CORPORACION HANDAL S. DE R.L., 3 Ave y 14 Calle N.O., Barrio Las Acacias, Apartado Postal No 1018, San Pedro Sula, Cortes, Honduras [SDNTK].

3. EASY CASH S. DE R.L., San Pedro Sula, Cortes, Honduras [SDNTK].

4. J & E S. DE R.L. DE C.V. (a.k.a. CLEOPATRA'S), 2 Nivel, Mall Galerias del Valle, San Pedro Sula, Cortes, Honduras; Mall Megaplaza, La Ceiba, Cortes, Honduras; Santa Rosa de Copan, Copan, Honduras [SDNTK].

5. JM TROYA, 3 Ave y 14 Calle N.O., Barrio Las Acacias, Apartado Postal No 1018, San Pedro Sula, Cortes, Honduras; Ave Cricunvalacion, Esquina Opuesta al Teatro Francisco Saybe, San Pedro Sula, Cortes, Honduras [SDNTK].

6. RANCHO LA HERRADURA (a.k.a. RANCHO LA HERADURA), Bajos de Choloma Carretera a Ticamaya, Cortes, Honduras [SDNTK].

7. SUPERTIENDAS HANDAL S. DE R.L. (a.k.a. SUPERTIENDAS & AUTO PARTES HANDAL), 3 Ave y 14 Calle N.O., Barrio Las Acacias, Apartado Postal No 1018, San Pedro Sula, Cortes, Honduras; Tax ID No. REFXT9I (Honduras) [SDNTK].

Dated: April 9, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–08873 Filed 4–15–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 the substantiation of charitable contributions (§ 1.170A–13).

DATES: Written comments should be received on or before June 17, 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 information collection should be directed to Katherine Dean, at (202) 622–3186, or at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Substantiation of Charitable Contributions.

OMB Number: 1545–0754.

Regulation Project Number: TD 8002.

Abstract: This regulation provides guidance relating to substantiation requirements for charitable contributions. Section 1.170A–13 of the regulation requires donors to maintain receipts and other written records to substantiate deductions for charitable contributions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 26,000,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,158,000.

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 13, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08831 Filed 4–15–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. on the dates indicated below:

Panel	Date(s)	Location
Surgery	May 22, 2013	Hamilton Crowne Plaza.
Neurobiology—B	May 23, 2013	Sheraton Crystal City Hotel.
Mental Health and Behavioral. Sciences—A	May 30, 2013	Sheraton Crystal City Hotel.
Gastroenterology	May 30–31, 2013	U.S. Access Board.
Pulmonary Medicine	May 30–31, 2013	Sheraton Crystal City Hotel.
Neurobiology—A	May 31, 2013	Ritz-Carlton, Pentagon City.
Cardiovascular Studies	June 3, 2013	Ritz-Carlton, Pentagon City.
Cellular and Molecular Medicine	June 3, 2013	Ritz-Carlton, Pentagon City.
Neurobiology—C	June 4, 2013	Sheraton Crystal City Hotel.
Neurobiology—E	June 4, 2013	VA Central Office.*
Endocrinology—B	June 4, 2013	Sheraton Crystal City Hotel.
Mental Health and Behavioral. Sciences—B	June 6, 2013	VA Central Office.*
Oncology—A	June 6, 2013	United Way Worldwide.
Oncology—B	June 7, 2013	United Way Worldwide.
Hematology	June 7, 2013	Ritz-Carlton, Pentagon City.
Infectious Diseases—B	June 7, 2013	U.S. Access Board.
Aging and Clinical Geriatrics	June 10, 2013	VA Central Office.*
Endocrinology—A	June 10, 2013	Ritz-Carlton, Pentagon City.
Epidemiology	June 11, 2013	VA Central Office.*
Nephrology	June 11, 2013	Sheraton Crystal City Hotel.
Neurobiology—D	June 11, 2013	Sheraton Crystal City Hotel.
Immunology—A	June 12, 2013	Sheraton Crystal City Hotel.
Infectious Diseases—A	June 12, 2013	Sheraton Crystal City Hotel.
Clinical Trials	June 13–14, 2013	VA Central Office.*
Clinical Application of Genetics	June 18, 2013	Ritz-Carlton, Pentagon City.
Eligibility	July 15, 2013	Ritz-Carlton, Pentagon City.

*Teleconference.

The addresses of the meeting sites are:

Hamilton Crowne Plaza, 14th & K Streets NW., Washington, DC.
Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA.
Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA.
U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC.
United Way Worldwide, 701 N. Fairfax Street, Alexandria, VA.
VA Central Office, 131 M Street NE., Washington, DC.

The purpose of the Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one-half hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with title 5 U.S.C., 552b(c) (6) and (9)(B).

Those who plan to attend the general session or would like to obtain a copy of the minutes from the panel meetings and rosters of the members of the panels should contact Alex Chiu, Ph.D., Manager, Merit Review Program (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5672 or email at *alex.chiu@va.gov.*

By Direction of the Secretary.

Dated: April 10, 2013.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–08836 Filed 4–15–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,
No. 73 April 16, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Allium munzii* (Munz's Onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley Crownscale); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0008; 4500030114]

RIN 1018–AX42

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Allium munzii* (Munz's Onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley Crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Allium munzii* (Munz's onion) under the Endangered Species Act. In total, approximately 98.4 acres (39.8 hectares) for *A. munzii* in Riverside County, California, fall within the boundaries of the critical habitat designation. We are not designating any critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale).

DATES: This rule becomes effective on May 16, 2013.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/carlsbad, http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0008, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we have developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office, or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this rule. On April 17, 2012, we published in the **Federal Register** a combined proposed rule for revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior.* We are now issuing this final rule concerning the designations of critical habitat for those two endangered plants.

The basis for our action. Under the Endangered Species Act, we are required to designate critical habitat for any endangered or threatened species. We must base our designation on the best available scientific data after taking into consideration economic, national security, and other relevant impacts. The Secretary may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

This rule designates final critical habitat for Allium munzii *only.* We are designating approximately 98.4 acres (ac) (39.8 hectares (ha)) of critical habitat for *A. munzii* in Elsinore Peak Unit, which is located near Elsinore Peak in the Santa Ana Mountains of western Riverside County, California. This rule does not designate final critical habitat for *Atriplex coronata* var. *notatior.*

The Secretary is exercising his discretion to exclude approximately 790 ac (320 ha)) of previously proposed critical habitat for *Allium munzii* and 8,020 ac (3,246 ha) of previously proposed critical habitat for *Atriplex coronata* var. *notatior.* We have determined that the benefits of exclusion outweigh the benefits of inclusion for lands previously proposed as critical habitat within areas covered under the Western Riverside County Multiple Species Habitat Conservation Plan, the Rancho Bella Vista Habitat Conservation Plan, and the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement.

Peer reviewer and public comment. We sought comment from independent specialists to ensure that our designations are based on scientifically sound data and analyses. We invited these peer reviewers to comment on our conclusions in the proposed revised rule. We also considered all comments and information we received during the comment periods.

Background

This is a final rule concerning the designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of *A. munzii* and *A. c.* var. *notatior,* refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975). For information on *A. munzii* and *A. c.* var. *notatior* critical habitat, refer to the proposed rule to designate revised critical habitat for *A. munzii* and *A. c.* var. *notatior* published in the **Federal Register** on April 17, 2012 (77 FR 23008). Information on the associated draft economic analysis (DEA) for the proposed rule to designate revised critical habitat was published in the **Federal Register** on September 11, 2012 (77 FR 55788).

The document is structured to address the taxa separately under each of the sectional headings that follow, where appropriate.

Previous Federal Actions—*Allium munzii*

The final listing rule for *Allium munzii* provides a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of listing, we concluded that designation of critical habitat for *A. munzii* was not prudent because such designation would not benefit the species. On June 4, 2004, we published a proposed rule to designate 227 ac (92 ha) of critical habitat for *A. munzii* on Federal land (Cleveland National Forest) in western Riverside County, California (69 FR 31569). On June 7, 2005, we published a final rule designating 176 ac (71 ha) of the proposed land as critical habitat for *A. munzii* (70 FR 33015).

On March 22, 2006, we announced the initiation of the 5-year review for *Allium munzii* and the opening of a 60-day public comment period to receive information (71 FR 14538). The *A. munzii* 5-year review was signed on June 17, 2009, and found that no change was warranted to the endangered status of *A. munzii.*

On October 2, 2008, a complaint was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D.

Cal.)) challenging our final critical habitat designation for *Allium munzii.* In an order dated March 24, 2009, the U.S. District Court for the Central District of California, Eastern Division, adopted a stipulated settlement agreement that was entered into by all parties. The agreement stipulated that the Service would reconsider critical habitat designations for both *A. munzii* and *Atriplex coronata* var. *notatior,* and submit to the **Federal Register** proposed revised critical habitat determinations for both plants by October 7, 2011. An extension for the completion of the proposed and final determinations was granted on September 14, 2011, with the proposed revised rule then due to the **Federal Register** on or before April 6, 2012, and the final revised rule on or before April 6, 2013. The combined proposed revised rule was published on April 17, 2012 (77 FR 23008).

On September 11, 2012, the document making available the DEA and reopening the public comment period for the combined proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* was published in the **Federal Register** (77 FR 55788). This final rule complies with the March 24, 2009, and September 14, 2011, court orders.

Previous Federal Actions—*Atriplex coronata* var. *notatior*

The final listing rule for *Atriplex coronata* var. *notatior* provides a description of previous Federal actions through October 13, 1998 (63 FR 54975), including proposed critical habitat in 1994 (59 FR 64812; December 15, 1994). At the time of the final listing rule in 1998, the Service withdrew the proposed critical habitat designation based on the taxon's continued decline and determined that designation of critical habitat was not prudent, indicating that no benefit over that provided by listing would result from such designation (63 FR 54991; October 13, 1998).

On October 6, 2004, we published a proposed rule to designate critical habitat for *Atriplex coronata* var. *notatior* and identified 15,232 ac (6,167 ha) of habitat that met the definition of critical habitat (69 FR 59844). However, we concluded in the 2004 proposed rule under section 4(b)(2) of the Act that the benefits of excluding lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) outweighed the benefits of including them as critical habitat. On October 13, 2005, we published a final critical habitat determination for *A. c.* var. *notatior* (70 FR 59952); there was no change from the proposed rule. We concluded that all 15,232 ac (6,137 ha) of habitat meeting the definition of critical habitat were located either within our estimate of the areas to be conserved and managed by the approved Western Riverside County MSHCP on existing Public/Quasi-Public (PQP) lands (preexisting natural and open space areas), or within areas where the plan would ensure that future projects would not adversely alter essential hydrological processes, and therefore all areas were excluded from critical habitat under section 4(b)(2) of the Act.

On October 2, 2008, a complaint was filed against the DOI and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat determinations for *Allium munzii* and *Atriplex coronata* var. *notatior* (see Previous Federal Actions—*Allium munzii* section above for a detailed account of this lawsuit and settlement agreement). As noted above, an extension for the completion of the new proposed and final determinations was granted. The combined proposed rule for the two plants was published on April 17, 2012 (77 FR 23008).

On May 25, 2011, we announced the initiation of the 5-year review for *Atriplex coronata* var. *notatior* and the opening of a 60-day public comment period to receive information (76 FR 30377). The 5-year review was signed on August 17, 2012, and found that no change was warranted to the endangered status of *A. c.* var. *notatior* (Service 2012b).

On September 11, 2012, the document making available the DEA and reopening the public comment period for the combined proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* was published in the **Federal Register** (77 FR 55788). This final rule complies with the March 24, 2009, and September 14, 2011, court orders.

Summary of Changes from Proposed Rule

(1) In our document that made available the DEA and reopened the comment period on the April 17, 2012, proposed rule (September 11, 2012; 77 FR 55788), we revised our proposed designation of critical habitat for *Allium munzii* to clarify primary constituent elements (PCEs) (2)(i)(B) and (2)(ii) regarding elevations necessary for conservation of *A. munzii.* We stated in the proposed rule that *A. munzii* is found in Riverside County, California, generally between the elevations of 1,200 to 2,700 feet (ft) (366 to 823 meters (m)) above mean sea level. *Allium munzii* has been observed in Riverside County (Elsinore Peak Unit, identified in the proposed rule as Unit 3—Elsinore Peak) at an elevation ranging from 3,200 to 3,500 ft (975 to 1,067 m). The PCE (2)(i)(B) (numbered as ''1(b)'' in the Primary Constituent Elements section below) is now defined as ''Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level,'' and PCE (2)(ii) (numbered as ''2'' in the Primary Constituent Elements section below) is now defined as ''Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.'' This correction did not change this unit's critical habitat boundaries for *A. munzii.*

(2) We reevaluated land management within proposed Subunit 1A for *Allium munzii.* A portion of this subunit (2.3 ac (0.9 ha)) is located within a Core Reserve established under the Stephens' Kangaroo Rat (SKR) Habitat Conservation Plan (HCP) and is not within lands covered by the Lake Mathews Multispecies Habitat Conservation Plan, as was described in the proposed revised rule. *Allium munzii* is not a covered species under the SKR HCP in this Core Reserve. However, this portion of proposed Subunit 1A is found within the Lake Mathews-Estelle Mountain Reserve, which is considered PQP (Public-Quasi Public) lands in the Western Riverside County MSHCP (collectively, this reserve is part of the Western Riverside County MSHCP Existing Core ''C''). The management actions and conservation objectives for *A. munzii* established within the permitted Western Riverside County MSHCP provide for the conservation and management of *A. munzii* in the Lake Mathews-Estelle Mountain Reserve (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below for additional details). The remainder of proposed Subunit 1A (0.5 ac (0.2 ha)) is located within the Western Riverside County MSHCP boundary and is subject to conservation measures established for *A. munzii,* including narrow endemic plant species survey requirements and the project review process (Dudek and Associates 2003, pp. 6–28–6–29) (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below*).* Thus, the entirety of proposed Subunit 1A is subject to the

conservation measures established for *A. munzii* under the Western Riverside County MSHCP.

(3) We reevaluated the jurisdiction of HCPs for proposed *Allium munzii* Subunit 4B—Skunk Hollow, which we described in the proposed rule as 74.8 ac (30.3 ha). Approximately 67.1 ac (27.2 ha) of this proposed subunit lies within the boundaries of the Rancho Bella Vista HCP. The remaining 7.7 ac (3.1 ha) are found on lands covered by the Western Riverside MSHCP, with 7.3 ac (2.95 ha) designated as PQP lands and 0.4 ac (0.16 ha) as Additional Reserve Lands (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below for more details). The boundaries and total acreage for proposed Subunit 4B—Skunk Hollow have not changed from the proposed rule, but we revised the appropriate table to reflect the two different conservation plans for this proposed subunit.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat (collectively referred to as ''adverse modification''). The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of an adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid adverse modification of critical habitat.

Under section 3(5)(A)(i) of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that provide for a species' life-history processes.

Under section 3(5)(A)(ii) of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not within the geographical area occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may

affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

Allium munzii

We derive the specific physical or biological features essential to the conservation of *Allium munzii* from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to revise critical habitat published in the **Federal Register** on April 17, 2012 (77 FR 23008), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

We have determined that *Allium munzii* requires the following physical or biological features: (1) Native perennial and annual grassland communities, open coastal sage or Riversidean sage scrub, and occasionally cismontane juniper woodlands found on clay soils at locally wetter sites on level or slightly south- and north-facing sloping (10–20 degrees) areas at elevations from 1,200 to 3,500 ft (366 to 1,067 m); (2) microhabitats within areas of suitable clay soils or areas of smaller discrete pockets of clay within other soil types that receive or retain more moisture than surrounding areas (due to factors such as exposure, slope, and subsurface geology); (3) sites for reproduction that contain clay or rocky loam soils; and (4) habitats found within native and, in some areas, nonnative plant communities that occur across the Riverside-Perris area (Perris Basin physiogeographic region) and within a portion of the southern Santa Ana Mountains (Elsinore Peak).

Atriplex coronata var. notatior

We derive the specific physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior* from studies of this taxon's habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to revise critical habitat published in the **Federal Register** on April 17, 2012 (77 FR 23008), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

We have determined that *Atriplex coronata* var. *notatior* requires the following physical or biological features: (1) Alkali vernal pools and floodplains that receive seasonal inundation, (2) a hydrologic regime that includes seasonal and large-scale flooding in combination with slow drainage in alkaline soils with low nutrient loads, and (3) natural floodplain processes that provide conditions that stimulate the germination of *A. c.* var. *notatior.*

Primary Constituent Elements (PCEs)

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior* in areas within the geographical area occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical or biological features that provide for a species' life-history process and, under the appropriate circumstances as described in the *Criteria Used to Identify Critical Habitat* section, below, are essential to the conservation of the species.

Allium munzii

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to *Allium munzii* are:

(1) Clay soil series of sedimentary origin (for example, Altamont, Auld, Bosanko, Porterville), clay lenses (pockets of clay soils) of those series that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (for example, Cajalco, Las Posas, Vallecitos):

(a) Found on level or slightly sloping landscapes or terrace escarpments;

(b) Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level;

(c) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(d) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

(e) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub, or occasionally in cismontane juniper woodlands; or

(2) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.

Atriplex coronata var. notatior

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the taxon's life-history processes, we determine that the PCEs specific to *Atriplex coronata* var. *notatior* are:

(1) Wetland habitat, including floodplains and vernal pools:

(a) Associated with native vegetation communities, including alkali playa, alkali scrub, and alkali grasslands; and

(b) Characterized by seasonal inundation or localized flooding, including infrequent large-scale flood events with low nutrient loads; and

(2) Slow-draining alkali soils including the Willows, Domino, Traver, Waukena, and Chino soil series with:

(a) Low permeability;

(b) Low nutrient availability; and

(c) Seasonal ponding and evaporation.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection.

Allium munzii

A detailed discussion of threats to *Allium munzii* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 31569, June 4, 2004; 70 FR 33015, June 7, 2005), the *A. munzii* 5-year review signed on June 17, 2009 (Service 2009), and the proposed revised rule for designation of critical habitat (77 FR 23008; April 17, 2012). Actions and development that alter habitat suitable for the species or affect the natural hydrologic processes upon which the species depends could threaten the species.

The physical or biological features essential to the conservation of *Allium munzii* all face ongoing threats that may require special management considerations or protection. Threats that may require special management considerations or protection of the physical or biological features include:

(1) Loss or degradation of native plant communities, such as grassland, open coastal sage scrub, and cismontane juniper woodlands, due to urban development, agricultural activities, and clay mining (PCEs 1 and 2);

(2) Disturbance of clay or other occupied soils by activities such as off-road vehicles (ORV) and fire management (PCEs 1 and 2);

(3) Invasion of nonnative plant species (PCEs 1 and 2); and

(4) Long-term threats including climatic variations such as extended periods of drought (PCE 1) (63 FR 54982–54986, October 13, 1998; 69 FR 31571, June 4, 2004; 70 FR 33023, June 7, 2005; Service 2009, pp. 10–22).

Special management considerations or protection may be needed to ensure the long-term existence of clay soil integrity within habitats that support the physical or biological features essential to the conservation of *Allium munzii.* These include:

(1) Protection of habitat from urban development or destruction to maintain integrity of clay soils,

(2) Reduction of land conversion to agricultural uses and reduction of disking or dryland farming to maintain native habitats,

(3) Management and control of invasive nonnative plants to provide open areas for growth and reproduction, and

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats.

Atriplex coronata var. notatior

A detailed discussion of threats to *Atriplex coronata* var. *notatior* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 59844, October 6, 2004; 70 FR 59952, October 13, 2005), the proposed revised rule for designation of critical habitat (77 FR 23008; April 17, 2012), and the *A. c.* var. *notatior* 5-year review signed on August 17, 2012 (Service 2012b). Actions and development that alter habitat suitable for *A. c.* var. *notatior* or affect the natural hydrological processes upon which it depends could threaten the taxon. The physical or biological features essential to the conservation of *A. c.* var. *notatior* may require special management considerations or protection to reduce or eliminate the following threats:

(1) Loss of alkali vernal plain habitat (including alkali playa, alkali scrub, alkali vernal pool, alkali annual grassland) and fragmentation as a result of activities such as urban development, manure dumping, animal grazing, agricultural activities, ORV activity, weed abatement, and channelization (PCEs 1 and 2);

(2) Indirect loss of habitat from the alteration of hydrology and floodplain dynamics (diversions, channelization, excessive flooding) (PCEs 1 and 2);

(3) Competition from nonnative plants (PCE 1); and

(4) Long-term threats, including water pollution, climatic variations, and changes in soil chemistry and nutrient availability (PCE 1) (63 FR 54983, October 13, 1998; 69 FR 59847, October 6, 2004; 70 FR 59966, October 13, 2005; Service 2012b, pp. 15–30).

Special management considerations or protection may be needed to ensure the long-term existence of alluvial soil integrity within habitats that support the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior.* These include:

(1) Protection of habitat, including underlying soils and chemistry, from development or destruction;

(2) Protection of floodplain processes to maintain natural, seasonal flooding regimes;

(3) Reduction of land conversion to agricultural uses and reduction of disking and dryland farming to maintain native habitats;

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats; and

(5) Implementation of manure and sludge dumping ordinances to maintain soil chemistry.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of these taxa. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the taxa. We are not designating any areas outside the geographical area occupied by *Allium munzii* and *Atriplex coronata* var. *notatior* because we consider those areas to be of sufficient quality, extent, and distribution to provide for the conservation of these taxa. We believe that the present quality habitat has, by survey, the demonstrated capacity to support self-sustaining occurrences of these taxa and that these areas containing the physical or biological features essential to the conservation of the species are dispersed in its range in a manner that provides for the survival and recovery of these taxa. We have designated as critical habitat some specific areas within the geographical range currently occupied by *A. munzii,* but that were not known to be occupied at the time of listing. However, based on the best available scientific information, the life history of the plant (see Background section of proposed revised rule; 77 FR 23008, April 17, 2012), and the limited survey efforts prior to listing, we determined that these specific areas are within the geographical area occupied by the species at the time of listing.

We reviewed the final critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* (70 FR 33015, June 7, 2005; 70 FR 59952, October 13, 2005, respectively), information from State, Federal, and local government agencies, and from academia and private organizations that have collected scientific data on the taxa. We also used the information provided in the 5-year reviews for *A. munzii* and *A. c.* var. *notatior* (Service

2009; Service 2012b). Other information we used for the final rule includes: California Natural Diversity Database (CNDDB) (CNDDB 2011a; CNDDB 2011b); reports submitted during consultations under section 7 of the Act; analyses for individual and regional HCPs where *A. munzii* and *A. c.* var. *notatior* are covered species; data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; information received from local species experts; published and unpublished papers, reports, academic theses, or surveys; Geographic Information System (GIS) data (such as species population and location data, soil data, land use, topography, aerial imagery, and ownership maps); and peer review comments and other correspondence with the Service from recognized experts. We analyzed this information to determine the specific areas within the geographical area occupied by the taxa at the time of listing that contain the physical or biological features essential to the conservation of *A. munzii* and *A. c.* var. *notatior.*

Allium munzii

Allium munzii occurs in relatively small population sizes, has a narrow geographic range (western Riverside County), and exhibits high habitat specificity, all of which make it vulnerable to land use changes. According to the Western Riverside County MSHCP, *A. munzii* is considered a narrow endemic plant species, a plant species that is highly restricted by its habitat affinities, edaphic requirements, or other ecological factors (Dudek and Associates 2003, pp. Def/Acr-ix and 6–28). Based on examination of soil maps for western Riverside County, Boyd (1988, p. 2) concluded that much of the scattered clay soil areas in the Riverside-Perris area were heavily disturbed and estimated up to an 80 to 90 percent loss of potential *A. munzii* habitat in 1988.

We conducted a spatial analysis using a GIS-based approach to determine the percent of mapped clay soils (Altamont, Auld, Bosanko, Porterville) that were converted or lost to agricultural or urban land uses in the Riverside-Perris area (based on 2007 land use GIS data). This is a conservative approach given that smaller pockets of clay soils are not shown on coarse-scale soil maps and may have been lost since the completion of the Riverside County soil map in 1971. We estimated that approximately 32 percent of these clay soils remain within suitable *Allium munzii* habitats (or a 67 percent loss) due to urban and agricultural development on plant communities associated with *A. munzii,* which includes both known and unknown locations of *A. munzii* populations. Based on the narrow endemism of this species, its reliance on clay soil types that are limited in geographic range in western Riverside County, and our estimated loss of 67 percent of these soils to urban or agricultural development, we believe that all of the proposed units and subunits represent the entire current range for this species.

The specific areas proposed as critical habitat include some areas within the present range of the species that had not yet been identified as occupied at the time of listing. We have determined that these areas are within the geographical area occupied by *A. munzii* at the time of listing based on the species life history and habitat requirements (see Background section in the proposed revised rule; 77 FR 23008, April 17, 2012) and the following: (1) Locations of plants reported or detected since listing in 1998 are in close proximity (less than 1 mi (1.5 km)) to previously known locations, and (2) of the 10 new Element Occurrences (EOs) found within the California Natural Diversity Database (CNDDB) (herbarium records and survey reports maintained by the California Department of Fish and Wildlife) reported since early 1980s surveys by Boyd (1988), 6 are within previous known occupied geographic regions of the greater Perris Basin (Temescal Canyon-Gavilan Hills/Plateau, Murrieta-Hot Springs areas) and the other 4 locations were found after surveys in the early 1990s within the Elsinore Peak (Santa Ana Mountains) and Domenigoni Hills regions. Additionally, we believe this currently occupied habitat was occupied at the time of listing given the species' naturally discontinuous distribution and occupation of microhabitats; the difficulty of accurately surveying for individual plants given the dormant (underground) phase of its life cycle prior to detection; and its restriction to small areas of clay soils in western Riverside County within the proposed units and subunits.

For defining critical habitat units, we looked at elevation (1,200 to 3,500 ft (366 to 1,067 m) above mean sea level (AMSL)), soil types (primarily clay soils), spatial distribution of 17 CNDDB-defined EOs from CNDDB (CNDDB 2011a), 1 location identified by Ellstrand not included in the CNDDB database (Ellstrand 1993, 1994) (proposed EO 24, as mentioned in the Spatial Distribution, Historical Range, and Population Size section for *Allium munzii* in the proposed revised rule; 77 FR 23008, April 17, 2012), rare plant monitoring survey results from Western Riverside County Regional Conservation Authority (RCA) (Western Riverside County RCA 2006, 2007, 2008, 2009, 2010, and 2011), and other surveys.

To identify several unit and subunit boundaries for the proposed revised critical habitat, we consulted a species expert with considerable field experience in surveying for *Allium munzii.* Given the difficulty in observing individual plants due to the timing of inflorescence, stage of growth, and large areal extent (as discussed in the Background section of the proposed revised rule; 77 FR 23008, April 17, 2012), Boyd (2011a, pers. comm.) recommended expanding the area surrounding an observation of a location of plants (either a group or just a few individuals) to capture additional individual plants that might not have been observed. Based on extensive field experience (approximately 30 years) with *A. munzii,* Boyd (2011a, pers. comm.) recommended including a 100-m (328-ft) roughly circular area (or 50-m (164-ft) radius) to define the unit or subunit boundaries. Because *A. munzii* is strongly associated with clay soils (which are often found as pockets of small scattered (but discrete) clay lenses that are typically too small to be identified on coarse-soil soil maps (see the Habitat and Soil Preferences section for *A. munzii* in the proposed revised rule; 77 FR 23008, April 17, 2012)), we used Boyd's recommendation of expanding the boundaries of observed plant locations to capture unobserved individuals in defining critical habitat units and subunits. Specifically, we used the Soil Conservation Service (now Natural Resources Conservation Service) soil mapping unit (2.47 ac or 1 ha) to refine Boyd's recommended radius of 164 to 183 ft (50 to 56 m). The 183-ft (56-m) radial distance translates into a 2.43-ac (0.98-ha) area, which is approximately equal to the soil mapping unit of 2.47 ac (1 ha). This methodology accounts for both potentially unobserved plants associated with CNDDB-defined EOs in areas of clay or rocky-sandy loam soils as well as encompassing the unmapped pockets of clay soil. In conjunction with the reported EOs, survey reports, and aerial photographs, this approach represents the best available information regarding areas currently occupied by *A. munzii* that contain the physical or biological features essential to the conservation of the species and therefore accurately defines the unit and subunit polygons.

The following sources were used to define microhabitats (i.e., depressional areas that retain moisture) for *Allium munzii,* which included using

underlying geology, slope, and aspect of hillsides within open areas of native and nonnative plant communities:

(1) For evaluating microtopography, including slope, aspect, and elevation, we used: (a) Digital elevation model (DEM) data from U.S. Geological Survey's (USGS) EROS Data Center, and (b) USGS 1:24,000 digital raster graphics (USGS topographic maps).

(2) For evaluating vegetative communities, spatial arrangement of these communities, and presence of disturbance or development, we used: (a) U.S. Department of Agriculture (USDA) National Agriculture Imagery Program (NAIP) aerial photography for 2010, and (b) ArcGIS online I3 Imagery Prime World 2D, validating conclusions made from examining these two satellite imagery data layers using high resolution Google Earth imagery.

(3) For subsurface geology, we used the USGS (2004) GIS layer of the Preliminary Digital Geologic Map of the Santa Ana, 1:100,000 quadrangle.

We acknowledge that the extent of the geographic areas surveyed and the survey methodologies may differ within and among the recorded plant locations from year to year (see discussion regarding the detectability of this species in the Background section of the proposed revised rule; 77 FR 23008, April 17, 2012). Based on the above GIS analysis, the 5 units, three of which we divided into 13 subunits, that we proposed as critical habitat for *Allium munzii* were the following: (1) Gavilan Hills (6 subunits), (2) Temescal Valley (4 subunits), (3) Elsinore Peak, (4) South Perris and Bachelor Mountain (3 subunits), and (5) North Domenigoni Hills (detailed descriptions for these proposed units and subunits can be found in the proposed revised rule; 77 FR 23008, April 17, 2012). All of the proposed units and subunits are within the present geographical range of the species and are currently occupied.

Atriplex coronata var. notatior

Atriplex coronata var. *notatior* is endemic to the San Jacinto, Perris, Menifee, and Elsinore Valleys of western lowland Riverside County, and is restricted to highly alkaline, silty-clay soils (59 FR 64813; December 15, 1994). At the time of listing, 12 populations of *A. c.* var. *notatior* were known (corresponding to the CNDDB EOs at the time), 11 of which were associated with two general locations (the San Jacinto and Old Salt Creek floodplains). We grouped the 12 CNDDB EOs and results from other surveys into four general locations and developed boundaries and proposed three critical habitat units based on the geographic locations of observed plants.

All of the proposed units are within the geographical area occupied by *Atriplex coronata* var. *notatior* at the time of listing. These units contain the physical or biological features that are essential to the conservation of this taxon and may require special management considerations or protection.

Atriplex coronata var. *notatior* was described in our 1998 listing rule within three geographical areas in western Riverside County (63 FR 54975; October 13, 1998). All three proposed units are within the geographical area occupied by the taxon at the time of listing. This range includes records of 15 EOs now recorded in the CNDDB database (CNDDB 2011b) and other survey data. To define critical habitat units, we examined the following information:

(1) Slow-draining alkali soils (Willows, Domino, Traver, Waukena, and Chino soil series) with low permeability.

(2) Seasonal and large-scale flood events (or ponded water) and subsequent scouring to create bare soils, as illustrated in historical aerial photographs.

(3) Spatial distribution of the EOs recorded in the CNDDB database (CNDDB 2011b).

(4) Plant monitoring survey results from Western Riverside County RCA (2007, 2008, 2009, 2010, and 2011) and other surveys.

We recognize that the geographic extent surveyed and survey methodologies may differ within and among the locations of individual or groups of plants from year to year (see discussion regarding the detectability of this species in Background section in the proposed revised rule; 77 FR 23008, April 17, 2012). Based on the above analysis we defined the following three proposed units for *Atriplex coronata* var. *notatior:* (1) Floodplain of the San Jacinto River from the San Jacinto Wildlife Area (including Mystic Lake) to Railroad Canyon Reservoir, (2) Upper Salt Creek, and (3) Alberhill Creek (detailed descriptions for these proposed units can be found in the proposed revised rule; 77 FR 23008, April 17, 2012). All units are within the present geographical range of the taxon and are currently occupied.

Other Factors Involved With Delineating Critical Habitat

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures, including related infrastructure, because such lands lack physical or biological features for *Allium munzii* and *Atriplex coronata* var. *notatior.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this rule. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0008, on our Internet sites *http://www.fws.gov/carlsbad/*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT,** above).

Because the Secretary is exercising his discretion to exclude all areas proposed as critical habitat for *Atriplex coronata* var. *notatior,* we are not designating critical habitat for that taxon. We are designating as critical habitat for *Allium munzii* lands that we have determined are within the geographical area occupied at the time of listing, are currently occupied, and contain the physical or biological features essential to the conservation of *A. munzii* that support the species' life-history processes and may require special management considerations or protection.

The unit described below contains all of the identified elements of the physical or biological features and supports the life processes for *Allium munzii.*

Final Critical Habitat Designation

Allium munzii

We are designating one unit as critical habitat for *Allium munzii.* This one unit is the Elsinore Peak Unit (identified as ''Unit 3—Elsinore Peak'' in the proposed rule). The approximate area of

this critical habitat unit is shown in Table 1. As discussed below in the Exclusions Based on Other Relevant Impacts section, we have determined that, for the lands proposed as revised critical habitat in Unit 1—Gavilan Hills, Unit 2—Temescal Valley, Unit 4—South Perris and Bachelor Mountain, and Unit 5—North Domenigoni Hills and their subunits, the benefits of exclusion outweigh the benefits of inclusion within areas covered under the Western Riverside County MSHCP, the Rancho Bella Vista HCP, or the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR ALLIUM MUNZII

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership in acres (hectares)		Size of unit in acres (hectares)
	Federal	State	
Elsinore Peak Unit	63.1 ac (25.5 ha)	35.3 ac (14.3 ha)	98.4 ac (39.8 ha)
Total	98.4 ac (39.8 ha)		98.4 ac (39.8 ha)

We present a brief description of this unit and the reasons why it meets the definition of critical habitat for *Allium munzii* below.

Elsinore Peak Unit

Elsinore Peak Unit consists of 98.4 ac (39.8 ha). About two-thirds (63.1 ac (25.5 ha)) of the Elsinore Peak unit is contained within the Cleveland National Forest, and one-third is a 35.3-ac (14.3-ha) inholding under State of California (State Lands Commission) ownership within the Western Riverside County MSHCP Conservation Area. The Elsinore Peak Unit represents the most southwestern extent of the range of *Allium munzii* and is the highest recorded elevation (3,300 to 3,500 ft (1,006 to 1,067 m)) for this species (Boyd and Mistretta 1991, p. 3). Many of the locations of *A. munzii* found on the Cleveland National Forest portion of this unit have been described as the least disturbed of known locations (Boyd and Mistretta 1991, p. 3), and are also unusual in that they are found on cobble deposits with thinner Bosanko clay soils (PCE 2) (Boyd and Mistretta 1991, p. 3). In 1991, Boyd and Mistretta (1991, p. 2) reported three stands of *A. munzii* at Elsinore Peak, each with more than 1,000 individual plants, the largest estimated at 5,000 plants. Nine localities were observed in a 2008 survey, with populations ranging from 5 to 100 plants (K. Drennen 2011, pers. comm.). A 2010 survey at Elsinore Peak was conducted by Boyd (2011b, pers. comm.) with approximately 23 general point localities recorded on lands owned and managed by both the U.S. Forest Service and the State Lands Commission. The Elsinore Peak Unit is within the geographical area occupied at the time of listing. The subsurface and surface elements that define this subunit, including clay soils, sloping hillsides, and microhabitats, provide the physical or biological features essential to the conservation of *A. munzii.*

The U.S. Forest Service and the State Lands Commission are not permittees under the Western Riverside County MSHCP. As only discretionary actions under the control of a permittee are covered activities under the Western Riverside County MSHCP, land use activities implemented by these two entities are not considered covered activities under the plan. In addition, the lands owned and managed by the State Lands Commission within this critical habitat unit are not included as part of the conceptual reserve design of the Western Riverside County MSHCP, nor are these considered PQP lands.

As outlined in the *Special Management Considerations or Protection* section above, several threats have been identified for *Allium munzii.* For *A. munzii* populations within Elsinore Peak Unit, threats identified at the time of listing included road grading, ORV activity, and nonnative annual grasses (63 FR 54987; October 13, 1998). Recreational activity and invasive species were identified as the two main threats to *A. munzii* on U.S. Forest Service land in the 2005 Final Environmental Impact Statement prepared for the Cleveland National Forest Land Management Plan (U.S. Forest Service (USFS) 2005, p. 160). A species management guide for *A. munzii,* completed in 1992, identified a number of management actions to help alleviate these threats, including construction of fencing and barriers to protect populations from ORV activity (Winter 1992, p. 10). Fencing, including a gate, was installed to protect plant populations, and boulders were placed along the roadway leading to Elsinore Peak to restrict ORV activity and other traffic (hikers and mountain bikers) in sensitive areas. This has reduced, but not eliminated, the impacts from ORV and other recreational activities to the population of *A. munzii* plants located on U.S. Forest Service land within this critical habitat unit (M. Thomas 2011, pers. comm.). In addition to the above activities, wildfire protection, including the use of fire retardant, may also impact the physical or biological features essential to the conservation of *A. munzii.* Therefore, the essential physical or biological features on the Forest Service lands within this unit may require special management considerations or protection. For the portion of the unit located on lands managed by the State Lands Commission, the essential physical or biological features may require special management considerations or protection to address threats to *A. munzii* resulting from ORV activity or invasive, nonnative annual grasses (CNDDB 2011a, p. 14). We are unaware of any current conservation actions being implemented for the benefit of *A. munzii* populations found on lands owned and managed by the State Lands Commission within this critical habitat unit.

Atriplex coronata var. *notatior*

We are not designating any critical habitat for *Atriplex coronata* var. *notatior.* All areas proposed as revised critical habitat in Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek (8,020 ac (3,246 ha)) are being excluded from designation. As discussed below in the Exclusions Based on Other Relevant Impacts section, we have determined that, for these lands, the benefits of exclusion outweigh the benefits of inclusion within areas covered under the Western Riverside County MSHCP.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund,

authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to adversely modify critical habitat. Under the statutory provisions of the Act, we determine adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may adversely modify critical habitat include those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Allium munzii.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Allium munzii.* These activities include, but are not limited to:

(1) Actions that would disturb or alter clay soils. Such activities could include, but are not limited to, recreational or other ORV use; fire management, including clearing of vegetation for fuel management; and fire retardant use on U.S. Forest Service lands. These actions could degrade or reduce habitat necessary for the growth and reproduction of *Allium munzii.*

(2) Actions that would result in the loss of clay soils. Such activities could include, but are not limited to, development, including structures and related infrastructure (such as roads), that require a permit under section 404 of the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*). These actions could reduce or eliminate habitat necessary for the growth and reproduction of *Allium munzii.*

(3) Actions that would significantly alter water movement within microhabitats of clay or rocky-sandy loam soils. Such activities could include, but are not limited to, federally funded road construction that results in channelization or impoundment of water. These actions may lead to changes in water flows that could degrade or eliminate habitat necessary for the growth and reproduction of *Allium munzii.*

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed revised critical habitat designations. Therefore, we are not exempting lands from this final designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *Allium munzii* and *Atriplex coronata* var. *notatior,* the benefits of critical habitat include public awareness of the two taxa's presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *A. munzii* and *A. c.* var. *notatior* due to the protection from adverse modification of critical habitat. In practice, a Federal nexus exists only on Federal land or for projects undertaken, funded, or requiring authorization by a Federal agency. For these two taxa, the most likely Federal nexus would be the issuance of a section 404 permit under the CWA.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized, how the plan provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, the Secretary will not exclude it from the designation.

Allium munzii

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat units (Unit 1—Gavilan Hills, Unit 2—Temescal Valley, Unit 3—Elsinore Peak, Unit 4—South Perris and Bachelor Mountain, and Unit 5—North Domenigoni Hills) and their subunits were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary is exercising his discretion to exclude the following areas from critical habitat designation for *Allium munzii:* Unit 1—Gavilan Hills, Unit 2—Temescal Valley, Unit 4—South Perris and Bachelor Mountain, and Unit 5— North Domenigoni Hills. Table 2 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat and those that are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 2—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT, AND AREAS EXCLUDED FROM ALLIUM MUNZII CRITICAL HABITAT DESIGNATION BY UNIT AND SUBUNIT

Unit and subunit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 1. Gavilan Hills		114.7 ac (46.4 ha)	114.7 ac (46.4 ha)
1A. Estelle Mountain	Western Riverside County MSHCP	2.8 ac (1.1 ha)	2.8 ac (1.1 ha)
1B. Dawson Canyon	Western Riverside County MSHCP	4.8 ac (1.9 ha)	4.8 ac (1.9 ha)
1C. Gavilan Plateau	Western Riverside County MSHCP	42.2 ac (17.1 ha)	42.2 ac (17.1 ha)
1D. Ida-Leona	Western Riverside County MSHCP	4.5 ac (1.8 ha)	4.5 ac (1.8 ha)
1E. Northeast Alberhill	Western Riverside County MSHCP	58 ac (23.5 ha)	58 ac (23.5 ha)
1F. North Peak	Western Riverside County MSHCP	2.4 ac (1.0 ha)	2.4 ac (1.0 ha)
Unit 2. Temescal Valley		481 ac (195 ha)	481 ac (195 ha)
2A. Sycamore Creek	Western Riverside County MSHCP	12.3 ac (5.0 ha)	12.3 ac (5.0 ha)
2B. De Palma Road	Western Riverside County MSHCP	12.8 ac (5.2 ha)	12.8 ac (5.2 ha)
2C. Alberhill Mountain	Western Riverside County MSHCP	300.5 ac (121.5 ha)	300.5 ac (121.5 ha)
2D. Alberhill Creek	Western Riverside County MSHCP	155.4 ac (62.8 ha)	155.4 ac (62.8 ha)
Unit 3. Elsinore Peak		98.4 ac (39.8 ha)	
Unit 4. South Perris and Bachelor Mountain		186.8 ac (75.6 ha)	186.8 ac (75.6 ha)
4A. Scott Road	Western Riverside County MSHCP	32.6 ac (13.3 ha)	32.6 ac (13.3 ha)
4B. Skunk Hollow	Rancho Bella Vista HCP;	67.1 ac (27.2 ha)	67.1 ac (27.2 ha)
	Western Riverside County MSHCP	7.7 acres (3.1 ha)	7.7 ac (3.1 ha)
4C. Bachelor Mountain	Southwestern Riverside County Multi-species Reserve.	79.3 ac (32.1 ha)	79.3 ac (32.1 ha)
Unit 5. North Domenigoni Hills	Southwestern Riverside County Multi-species Reserve.	8.2 ac (3.3 ha)	8.2 ac (3.3 ha)
Total		889 ac (360 ha)	790 ac (320 ha)

Note: Area sizes may not sum due to rounding.

Atriplex coronata var. *notatior*

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat units, Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek, were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary is exercising his discretion to exclude the following areas from critical habitat designation for *Atriplex coronata* var. *notatior:* Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek. Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 3—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT AND EXCLUDED FROM ATRIPLEX CORONATA VAR. NOTATIOR CRITICAL HABITAT DESIGNATION BY UNIT

Unit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 1. San Jacinto River	Western Riverside County MSHCP	7,039 ac (2,849 ha)	7,039 ac (2,849 ha)
Unit 2. Upper Salt Creek	Western Riverside County MSHCP	874 ac (354 ha)	874 ac (354 ha)

TABLE 3—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT AND EXCLUDED FROM ATRIPLEX CORONATA VAR. NOTATIOR CRITICAL HABITAT DESIGNATION BY UNIT—Continued

Unit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 3. Alberhill Creek	Western Riverside County MSHCP	107 ac (43 ha)	107 ac (43 ha)
Total		8,020 ac (3,246 ha)	8,020 ac (3,246 ha)

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a DEA of the proposed critical habitat designation (Industrial Economics, Incorporated [IEC] 2012a). The draft analysis, dated August 3, 2012, was made available for public review from September 11, 2012, through October 11, 2012 (77 FR 55788; September 11, 2012). Following the close of the comment period, a final analysis (dated December 12, 2012) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEC 2012b).

The intent of the final economic analysis (FEA) is to evaluate the potential economic impacts associated with the designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the taxa (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the taxa. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the taxa. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since these taxa were listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1998 (63 FR 54975; October 13, 1998), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because this time frame includes activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The FEA quantifies and evaluates the incremental economic impacts of *Allium munzii* and *Atriplex coronata* var. *notatior* conservation efforts associated with the following categories of activity: (1) Development, (2) agricultural operations, (3) transportation, (4) fire management, (5) mining, (6) recreational activities, (7) flood control, and (8) utilities.

Total present value impacts anticipated to result from the designation of all areas proposed as critical habitat for *Allium munzii* are $75,000 over the first 20 years following the designation, assuming a 7 percent discount rate ($81,000 assuming a 3 percent discount rate). The total present value impacts anticipated to result from the designation of the Elsinore Peak Unit (Unit 3 in the proposed rule) are estimated to be $25,000 assuming a 7 percent discount rate ($28,000 assuming a 3 percent discount rate). For the areas being excluded from critical habitat for *A. munzii,* present value impacts are $51,000 assuming a 7 percent discount rate ($53,000 assuming a 3 percent discount rate) (IEC 2012b, ES–9).

Total present value incremental impacts in those areas being excluded from critical habitat for *Atriplex coronata* var. *notatior* are estimated to be $74,000, assuming a 7 percent discount rate ($97,000 assuming a 3 percent discount rate (IEC 2012b, p. ES–9). For both plants, all incremental costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations and re-initiation of consultations for existing management plans (IEC 2012b, p. 4–2).

No areas are being excluded based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.fws.gov/carlsbad* or *http://www.regulations.gov*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and

impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

As described below, we have evaluated the management and protection provided by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement. These plans:

(1) Are complete and provide the same or better level of protection from adverse modification of *Allium munzii* and *Atriplex coronata* var. *notatior* habitat than that provided through a consultation under section 7 of the Act;

(2) Support a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Provide conservation strategies and measures consistent with currently accepted principles of conservation biology.

The Secretary is exercising his discretion to exclude all permittee-owned or controlled lands proposed as critical habitat for the two taxa that fall within the boundaries of the Western Riverside County MSHCP and the Rancho Bella Vista HCP, and all non-Federal lands proposed as critical habitat for *Allium munzii* that are in the Southwestern Riverside County Multi-species Reserve and covered by the Cooperative Management Agreement (see the *Rancho Bella Vista Habitat Conservation Plan* and *Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement* sections below).

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP is a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the plan area. The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including *Allium munzii* and *Atriplex coronata* var. *notatior,* which are further considered as ''Covered Species Adequately Conserved''; that is, those where the species objectives are met and are provided take authorization through the Natural Community Conservation Planning (NCCP) Permit (Dudek and Associates 2003, Section 9.2 and Table 9–3). On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004). In accordance with the procedure described in the Western Riverside County MSHCP Implementing Agreement (IA), the permit has been amended to add two newly incorporated cities (Jurupa Valley and Eastvale) within the Western Riverside County MSCHP boundary, for a current total of 24 permittees.

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands (ARL)) to complement the approximate 347,000 ac (140,426 ha) of preexisting natural and open space areas (PQP lands) in the plan area. These PQP lands include those under the ownership of public agencies, primarily the U.S. Forest Service and the Bureau of Land Management (BLM), as well as permittee-owned or controlled open-space areas managed by the State of California and Riverside County. Collectively, the ARL and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of the ARL is not mapped or precisely delineated (hard-lined) in the Western Riverside County MSHCP. Instead, the configuration and composition of the ARL are described in text within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area. The ARL lands are being acquired and conserved as part of the ongoing implementation of the Western Riverside County MSHCP.

Section 5.2 of the Western Riverside County MSHCP defines management activities to be implemented by reserve managers and a reserve management oversight committee (with priorities identified by those entities) to carry out species objectives and provide for biological values identified in section 3.2 of the plan (Dudek and Associates 2003, p. 5–3). Management actions are defined at two levels within the Western Riverside County MSHCP—habitat- or landscape-based management activities and species-specific management activities (Dudek and Associates 2003, p. 5–3). Species-specific management activities defined for *Allium munzii* state that reserve managers are to manage known and future occurrences of this species to reduce threats related to competition with nonnative plant species, clay mining, off-road vehicle use, and discing activities (Dudek and Associates 2003, p. 5–31). For *Atriplex coronata* var. *notatior,* the Western Riverside County MSHCP management actions include: (1) General Management Measure 4 (maintenance and management of wetland habitat (Dudek and Associates 2003, p. 5–5)) and (2) a requirement for reserve managers to ensure that habitat supports [conservation] functions within the Western Riverside County MSHCP Conservation Area by maintaining and enhancing the floodplain processes of the San Jacinto River, Mystic Lake, and upper Salt Creek, including intermittent flooding and periodic pooling, with particular emphasis to preventing alteration of hydrology and floodplain dynamics, farming, fire and fire suppression activities, off-road vehicle use, and competition from nonnative plant species (Dudek and Associates 2003, p. 5–32).

Species-specific conservation objectives are defined for *Allium munzii* and *Atriplex coronata* var. *notatior* in the Western Riverside County MSHCP. Conservation objectives for *A. munzii* include:

(1) Conserve at least 21,260 ac (8,603 ha) of suitable habitat to include at least 2,070 ac (838 ha) of clay soils;

(2) Conserve at least 13 localities (populations within Elemental Occurrences (EOs) as defined in the California Natural Diversity Data Base (CNDDB)) within the Temescal Valley and the southwestern portion of the plan area; and

(3) Conduct Narrow Endemic Plan Species surveys as discussed below (Dudek and Associates 2003, pp. 9–126–9–127).

Conservation objectives identified in the Western Riverside County MSHCP for *Atriplex coronata* var. *notatior* include:

(1) Conserve at least 6,900 ac (2,792 ha) of suitable habitat including grasslands, playas, and vernal pools;

(2) Conserve the Alberhill Creek locality and three core areas located

along the San Jacinto River and in the upper Salt Creek drainage;

(3) Conduct surveys as discussed below;

(4) Conserve the floodplain along the San Jacinto River consistent with objective 1, including maintaining floodplain processes; and

(5) Conserve the floodplain along Salt Creek, generally in its existing condition, including maintaining floodplain processes (Dudek and Associates 2003, pp. 9–137–9–138).

Allium munzii

In our analysis of the effects to *Allium munzii* of the issuance of the Western Riverside County MSHCP permit, we acknowledged that specific conservation objectives would be provided in the Western Riverside County MSHCP to ensure that suitable habitat and known populations of *A. munzii* would persist (Service 2004, p. 326). To this effect, for narrow endemic species such as *A. munzii,* the Western Riverside County MSHCP states:

''The MSHCP is a Criteria-based plan, focused on preserving individual species through Conservation. Conservation is based on the particular habitat requirements of each species as well as the known distribution data for each species. The existing MSHCP database does not, however, provide the level of detail sufficient to determine the extent of the presence or distribution of Narrow Endemic Plant Species within the MSHCP Plan Area. Since Conservation planning decisions for these species will have a substantial effect on the status of these species, additional information regarding the presence of these species must be gathered during the long-term implementation of the MSHCP to ensure that appropriate Conservation of these species occurs'' (Dudek and Associates 2003, p. 6–28).

The Western Riverside County MSHCP defines *Allium munzii* as a narrow endemic plant species and requires surveys for this species as part of the review process for public and private projects in certain areas where one or more permittees have discretionary authority for project approval (Dudek and Associates 2003, pp. 6–28–6–29). These surveys are required for all public and private projects where appropriate habitat is present (Dudek and Associates 2003, Figure 6–1, pp. 6–29–6–30) and include seven proposed critical habitat units or subunits, and portions of five other proposed critical habitat subunits for *A. munzii.* Where survey results are positive, project proposals with the potential to affect a narrow endemic plant species are subject to avoidance, minimization, and mitigation strategies (Dudek and Associates 2003, p. 6–29). In addition, the Western Riverside County MSHCP indicates that, for narrow endemic plant species populations identified as part of this survey process (including *A. munzii*), impacts to 90 percent of those portions of the property that provide for long-term conservation value for these species will be avoided until it is demonstrated that conservation objectives (discussed above) are met (Dudek and Associates 2003, p. 6–38). The information from these surveys is to be used to prioritize areas for acquisition into the Western Riverside County MSHCP (Service 2004, p. 28). Surveys conducted from 2005 through 2011 have confirmed nine extant populations within 13 CNDDB-defined EOs (Western Riverside County Regional Conservation Authority 2011, p. 31). These 9 populations are part of the 13 populations (localities) identified for conservation under management activities and species-specific conservation objectives within the Western Riverside County MSHCP (Dudek and Associates 2003, pp. 9–126–9–127), as noted above.

We stated in our biological opinion (analysis of effects) of the Western Riverside County MSHCP that:

(1) All 16 known localities (or CNDDB-defined EOs) would be included in the Conservation Area;

(2) We anticipated that occurrences determined to be important to the overall conservation of the species will be considered for inclusion in the Additional Reserve Lands; and

(3) At least some of the avoided areas may be maintained as open space habitat (Service 2004, p. 327).

In addition, the Western Riverside County MSHCP identified two CNDDB-defined EOs partially within the Conservation Area (EOs 2 and 9) and two that are currently located outside the Conservation Area (EOs 5 and 16) that will be added to the Conservation Area. Finally, as noted above, the Western Riverside County MSHCP provides flexibility for criteria refinement, such that if an area is currently outside the reserve design defined by the Western Riverside County MSHCP, but is later determined to be important for conservation, then it could be added to the reserve as ARL or Acquisition Lands.

Atriplex coronata var. notatior

In addition to the management actions and conservation objectives listed above, which apply within the approximately 8,020 ac (3,246 ha) proposed as critical habitat for *Atriplex coronata* var. *notatior,* surveys are also required for *A. c.* var. *notatior* in conjunction with the Western Riverside County MSHCP implementation (Dudek and Associates 2003, p. 6–63). For *A. c.* var. *notatior,* these additional surveys are required within suitable habitat in areas defined by the boundaries of the Criteria Area (Dudek and Associates 2003, Figure 6–2, p. 6–64). Of the approximately 8,020 ac (3,246 ha) proposed as critical habitat, approximately 7,620 ac (3,084 ha) are within this Criteria Area and subject to the additional survey requirements. As with narrow endemic plant species, in locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the identified species will be avoided until the species-specific conservation objectives for these species are met (Dudek and Associates 2003, p. 6–65). We stated in our analysis of the effects of the Western Riverside County MSHCP that this provides the flexibility to include those locations that contain large numbers of individuals or are determined to be important to the conservation of *A. c.* var. *notatior* in the ARL (Dudek and Associates 2003, p. 6–70; Service 2004, p. 353).

Under the Western Riverside County MSHCP, surveys for *Atriplex coronata* var. *notatior* are required every 8 years to verify occupancy for at least 75 percent of known locations. If a decline in distribution below this threshold is observed, management activities are triggered, as appropriate, to meet the species-specific objectives identified in the plan (Dudek and Associates 2003, Table 9.2; Service 2004, p. 355). Surveys conducted by the Western Riverside County Regional Conservation Authority (RCA) from 2006 to 2010 confirmed two of four CNDDB-defined EOs within the three proposed critical habitat units (Units 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek) (Western Riverside County RCA 2011, p. 33). These two locations are two of the three core areas located along the San Jacinto River and the upper Salt Creek drainage that were identified for conservation under management activities and species-specific conservation objectives within the Western Riverside County MSHCP (Dudek and Associates 2003, pp. 9–137–9–138), as noted above. The Alberhill Creek locality has not yet been surveyed.

In the 1998 final listing rule for *Allium munzii* and *Atriplex coronata* var. *notatior,* the present or threatened destruction, modification, or curtailment of their habitat or range, including urban development, agriculture, and clay mining for *A. munzii,* and agriculture, urban

development, alteration of hydrology for *A. c.* var. *notatior,* were identified as the primary threats to these taxa (63 FR 54982, October 13, 1998; Service 2009, 2012b). The Western Riverside County MSHCP helps to address these threats to *A. munzii* and *A. c.* var. *notatior* through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of these taxa (Dudek and Associates 2003, pp. 9–126–9–127, 9–137–9–138).

In summary, the Western Riverside County MSHCP provides a comprehensive habitat-based approach to the protection of covered species, including *Allium munzii* and *Atriplex coronata* var. *notatior,* by focusing on lands identified as important for the long-term conservation of its covered species and through the implementation of management actions for conserving those lands, as outlined in the management actions and conservation objectives listed above (Western Riverside County RCA *et al.* 2003, p. 51).

The Benefits of Inclusion—*Western Riverside County MSHCP*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* and *Atriplex coronata* var. *notatior* by triggering additional review and conservation through other Federal laws. Review of Federal actions affecting designated critical habitat units would consider the importance of this habitat to the two plants and the protections required for the taxa and their habitats.

Federal laws other than the Act that are most likely to afford protection to designated critical habitat for *Allium munzii* include the National Forest Management Act (NFMA; 16 U.S.C. 1600 *et seq.*) and, to a lesser degree, the CWA. Projects requiring a review under the NFMA or the CWA that are located within critical habitat or are likely to affect critical habitat would create a Federal nexus and trigger section 7 consultation under the Act. The NFMA requires the U.S. Forest Service to incorporate provisions to support and manage plant and animal communities for diversity and long-term rangewide viability of native species into its Land and Resource Management Plans. Consultation with the U.S. Forest Service would likely be triggered by any revision to the Land and Resource Management Plan for the Cleveland National Forest, where *A. munzii* is found. Examples of potential projects that could trigger consultation as a result of CWA include projects that require a section 404 CWA permit in areas near the washes or on terraces within washes or drainages occupied by *A. munzii.* However, a jurisdictional delineation would likely be required to evaluate the regulatory involvement of the U.S. Army Corps of Engineers.

Similarly, Federal laws other than the Act most likely to afford protection to designated critical habitat for *Atriplex coronata* var. *notatior* include the CWA. Projects requiring a review under the CWA that are located within critical habitat or are likely to affect critical habitat would create a Federal nexus and trigger section 7 consultation under the Act. Examples of potential projects that could trigger consultation as a result of CWA include activities that require a section 404 CWA permit within floodplains associated with wetland habitats, which may also require a jurisdictional delineation to evaluate the regulatory involvement of the U.S. Army Corps of Engineers.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—*Western Riverside County MSHCP*

The benefits of excluding from designated critical habitat the approximately 636 ac (257.4 ha) of proposed critical habitat for *Allium munzii* and 8,020 ac (3,246 ha) of proposed critical habitat for *Atriplex coronata* var. *notatior* that are within the boundaries of the Western Riverside County MSHCP are significant and include: (1) Continued and strengthened effective working relationships with all Western Riverside County MSHCP jurisdictions and stakeholders in implementing the conservation management objectives for these taxa and their habitats identified in the Western Riverside County MSHCP, described above, and promoting the conservation of these taxa and their habitats; (2) encouragement of other entities within the range of *A. munzii* and *A. c.* var. *notatior* to complete HCPs; and (3) encouragement of additional HCP and other conservation plan development in the future on other private lands for other federally listed species.

Implementation of the Western Riverside County MSHCP has resulted in the acquisition of 487 ac (197 ha) of land within the Upper and Lower San Jacinto River and Upper Salt Creek geographical locations of *Atriplex coronata* var. *notatior,* which are located within proposed critical habitat (Unit 1—San Jacinto River and Unit 2—Upper Salt Creek). These areas were added to the existing conserved lands and are now incorporated into the Western Riverside County MSHCP Reserve (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). Two of these parcels were recently purchased with HCP Land Acquisition Grant Program funds authorized under section 6 of the Act (M. Woulfe 2011a and 2011b, pers. comm.). Since 2004, only 10 ac (4 ha) of habitat in the Upper Salt Creek areas have been lost (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). These actions provide support for the effectiveness of the Western Riverside County MSHCP in reducing the threats to *A. c.* var. *notatior* and in addressing the special management considerations or protections necessary to ensure the long-term existence of the physical or biological features essential to the conservation of this taxon.

In the case of plants such as *Allium munzii* and *Atriplex coronata* var. *notatior,* we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan is voluntary. In

contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including: (1) Narrow endemic plant species, such as *A. munzii;* and (2) those with limited geographic distribution and specialized habitat and management requirements, such as *A. c.* var. *notatior,* through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Western Riverside County MSHCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by Riverside County to protect *A. munzii* and *A. c.* var. *notatior* under this plan.

Excluding lands within the Western Riverside County MSHCP from the critical habitat designation will also sustain and enhance the working relationship between the Service and Riverside County. The willingness of the county and its partners to work with the Service on innovative ways to manage federally listed species will continue to reinforce those conservation efforts and our partnership, both of which contribute significantly toward achieving recovery of *Allium munzii* and *Atriplex coronata* var. *notatior.*

By excluding approximately 8,656 ac (3,503 ha) of land within the boundaries of the Western Riverside County MSHCP from critical habitat designation, we are encouraging new partnerships with other landowners and jurisdictions to protect *Allium munzii* and *Atriplex coronata* var. *notatior* as well as other listed species. Our ongoing partnerships with Riverside County, the larger regional Western Riverside County MSHCP participants, and the landscape-level multiple species conservation planning efforts they promote are essential to achieve long-term conservation of *A. munzii* and *A. c.* var. *notatior.* We consider this voluntary partnership in conservation vital to our understanding of the status of species on non-Federal lands and necessary for us to implement recovery actions such as habitat protection and restoration, and beneficial management actions for species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Western Riverside County MSHCP*

We have reviewed and evaluated the exclusion of approximately 8,656 ac (3,503 ha) of land within the boundaries of the Western Riverside County MSHCP. We have created close partnerships with Riverside County and other stakeholders through the development of the Western Riverside County MSHCP, which incorporates protections and management objectives (described above) for *Allium munzii* and *Atriplex coronata* var. *notatior* and the habitats upon which the taxa depend for growth and reproduction. The conservation strategy identified in the Western Riverside County MSHCP, along with our close coordination with Riverside County and other stakeholders, addresses the identified threats to *A. munzii* and *A. c.* var. *notatior* and the geographical areas that contain the physical or biological features essential to their conservation. Our partnership with Riverside County helps ensure implementation of the protections and management actions identified within the Western Riverside County MSHCP. Therefore, the relative benefits to either *Allium munzii* or *Atriplex coronata* var. *notatior* of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Western Riverside County MSHCP and State and Federal laws. The Western Riverside County MSHCP provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and *A. c.* var. *notatior,* and that help achieve recovery of these taxa through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Western Riverside County MSHCP boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii* and *Atriplex coronata* var. *notatior.* The framework for the regional Western Riverside County MSHCP was developed over a 6-year period and has been in place since 2004. The Western Riverside County MSHCP requires the implementing agency, the Western Riverside County RCA, to prepare and submit a report of its annual activities. These annual reports include an overview of the plan, a summary of habitat gains, and a review of the management activities of the Western Riverside RCA, management of property, and management of the reserves. The activities of the biological monitoring program are also included in this annual report. The reporting for these activities is available to the public on the Internet at: *http://www.wrc-rca.org/.* In addition, the previous rulemaking for these taxa has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and *A. c.* var. *notatior,* and the location of areas containing the physical or biological features essential to the conservation of these taxa.

Within the Lake Mathews-Estelle Mountain Reserve, Riverside County is implementing other outreach and educational activities. For example, ''Endangered Species Act Day'' is sponsored by the Riverside County Habitat Conservation Agency, and the Service has been an active participant and partial funder for this event. These actions, collectively, provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *Allium munzii,* as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Lake Mathews-Estelle Mountain Reserve.

Exclusion of these lands from both *Allium munzii* and *Atriplex coronata* var. *notatior* critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Western Riverside County MSHCP. These partnerships are focused on conservation of multiple species, including *A. munzii* and *A. c.* var. *notatior,* and secure conservation benefits for the taxa that will contribute to the species' recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships help foster future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of designating areas covered by the Western Riverside County MSHCP as critical habitat and balancing the benefits of excluding those areas from

critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—*Western Riverside County MSHCP*

We have determined that the exclusion of approximately 636 ac (257.4 ha) of land from the final designation of critical habitat for *Allium munzii* and the entire 8,020 ac (3,246 ha) of land proposed as critical habitat for *Atriplex coronata* var. *notatior* within lands covered under the permitted Western Riverside County MSHCP will not result in the extinction of *A. munzii* or *A. c.* var. *notatior.* Management actions and species-specific conservation objectives identified in the Western Riverside County MSHCP for the two taxa and their habitats provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of these taxa. In our 2004 biological opinion, the Service determined that implementation of the Western Riverside County MSHCP is not likely to jeopardize the continued existence of *A. munzii* or *A. c.* var. *notatior* (Service 2004, pp. 327, 356).

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation the following proposed units or subunits:

- For *Allium munzii,* Unit 1—Gavilan Hills, including all subunits (1A–1F) (114.7 ac (46.4 ha)); Unit 2—Temescal Valley including all subunits (2A–2D) (481 ac (194.5 ha)); Subunit 4A (32.6 ac (13.3 ha)) of Unit 4—South Perris and Bachelor Mountain; and a portion of Subunit 4B (7.7 ac (3.1 ha)) of Unit 4—South Perris and Bachelor Mountain.
- For *Atriplex coronata* var. *notatior,* all land within Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek (8,020 ac (3,246 ha)).

All of these proposed units or subunits are encompassed within lands covered under the Western Riverside County MSHCP.

Rancho Bella Vista Habitat Conservation Plan

A portion of proposed Subunit 4B—Skunk Hollow for *Allium munzii* is found within a smaller, individual HCP, the Rancho Bella Vista HCP, which was approved prior to the Western Riverside County MSHCP through a separate section 10(a)(1)(B) permit and authorized Pacific Bay Properties to develop the 798–ac (323–ha) site that included 102.3 ac (41.4 ha) of native habitat (Service 2004, p. 66). Within this subunit, 67.1 ac (27.2 ha) of the proposed 74.8 ac (30.3 ha) in Subunit 4B–Skunk Hollow are located within the conserved lands defined by the Rancho Bella Vista HCP and are designated as natural open space or conserved habitat (Service 2000). The remaining areas of proposed Subunit 4B–Skunk Hollow are identified as PQP (7.3 acre (2.95 ha) and ARL (0.4 ac (0.16 ha)) lands within the Western Riverside County MSHCP. Those areas are addressed in the *Western Riverside County Multiple Species Habitat Conservation Plan* section above.

Long-term management of the Rancho Bella Vista HCP conservation lands includes the following activities:

(1) Control access and, where necessary, limit access by people, vehicles, and domestic pets to conserved habitats and preclude access to highly sensitive resources.

(2) Monitor target species, including *Allium munzii,* and provide species management of all covered species.

(3) Identify and rank, in order of priority, opportunities for habitat restoration and enhancement within the conserved habitats.

(4) Monitor conserved lands for the occurrence of nonnative invasive plants and animals and provide the prompt control of such species.

(5) Map the locations of nonnative plant species within and immediately adjacent to conserved habitats and schedule for removal, monitoring, or control as necessary.

(6) Develop a fire management program in consultation with the County of Riverside Fire Marshal and wildlife agencies to minimize impacts to conserved habitats from fire management programs and adjacent land uses.

(7) Develop public information materials and programs including:

(a) A brochure that describes the natural resources, areas of special interest, and prohibited activities within conserved habitats;

(b) A landscape and fuel break planning brochure for homeowners and homeowner associations located adjacent to conserved habitats; and

(c) Nature trails along or through portions of conserved habitats (provided impacts are avoided or mitigated) (Service 2000, pp. 4–5).

Benefits of Inclusion—*Rancho Bella Vista HCP*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* by triggering additional review and conservation through other Federal laws. Review of Federal actions affecting designated critical habitat units would consider the importance of this habitat to *A. munzii* and the protections required for the species and its habitat.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—*Rancho Bella Vista HCP*

The benefits of excluding from designated critical habitat the 67.1 ac (27.2 ha) of proposed critical habitat for *Allium munzii* that are within the boundaries of the Rancho Bella Vista HCP are significant and include: (1) Continued and strengthened effective working relationship with the Rancho Bella Vista HCP permittee in implementing the conservation management objectives for *A. munzii* and its habitat identified in the Rancho Bella Vista HCP, described above, and promoting the conservation of this species and its habitat; (2) encouragement of other entities within

the range of *A. munzii* to complete HCPs; and (3) encouragement of additional HCP and other conservation plan development in the future on other private lands for other federally listed species. In addition, because the lands that comprise the Rancho Bella Vista HCP are now encompassed within the boundaries of the Western Riverside County MSHCP, we see the continued and strengthened effective working relationships with the larger Western Riverside County MSHCP and its jurisdictions and stakeholders in promoting the conservation of *A. munzii* and its habitat as an important benefit of exclusion of this portion of proposed Subunit 4B—Skunk Hollow.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Rancho Bella Vista HCP*

We have reviewed and evaluated the exclusion of approximately 67.1 ac (27.2 ha) of land within the boundaries of the Rancho Bella Vista HCP for *Allium munzii.* The benefits of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Rancho Bella Vista HCP and under the Act. The Rancho Bella Vista HCP provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and help achieve recovery of this species through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Rancho Bella Vista HCP boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii.* As an example, the Rancho Bella Vista Park, which includes both active and passive uses of the area, includes a nature trail through portions of conserved habitats and an interpretive, educational display for the larger Skunk Hollow area. These actions provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *A. munzii,* as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Rancho Bella Vista HCP. In addition, the previous rulemaking for this species has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and the location of areas containing the physical or biological features essential to the conservation of the species.

In the case of plants such as *Allium munzii,* we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan is voluntary. In contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including narrow endemic plant species such as *A. munzii,* through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Rancho Bella Vista HCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by the permitttee to protect *A. munzii* under this plan.

Exclusion of these lands from critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Rancho Bella Vista HCP. These partnerships are focused on conservation of multiple species, including *Allium munzii,* and secure conservation benefits for the taxa that will contribute to the species' recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships aid in fostering future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of specifying areas covered by the Rancho Bella Vista HCP as critical habitat and balancing the benefits of excluding these areas from critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—*Rancho Bella Vista HCP*

We have determined that the exclusion of 67.1 ac (27.2 ha) within lands covered under the permitted Rancho Bella HCP from the final designation of critical habitat for *Allium munzii* will not result in the extinction of *A. munzii.* Conservation measures identified in the Rancho Bella Vista HCP for *A. munzii* and its habitat provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of *A. munzii.* In our 2000 biological opinion, the Service determined that implementation of the Rancho Bella Vista HCP would not likely jeopardize the continued existence of *A. munzii* (Service 2000, p. 41).

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation for *Allium munzii* the portion of proposed Subunit 4B—Skunk Hollow (67.1 ac (27.2 ha)), which is encompassed within lands covered under the Rancho Bella Vista HCP.

Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement

Subunit 4C—Bachelor Mountain (79.3 ac (32.1 ha)) and Unit 5—North Domenigoni Hills (8.2 ac (3.3 ha)) proposed as critical habitat for *Allium munzii* are contained within the Southwestern Riverside County Multi-species Reserve (Reserve), which was created in 1992, prior to the listing of *A. munzii,* as a mitigation measure for impacts resulting from the Diamond Valley Lake Reservoir. The Reserve comprises about 13,000 ac (5,261 ha), approximately 9,400 ac (3,804 ha) of which are owned by the Metropolitan Water District, 2,500 ac (1,012 ha) by the Riverside County Habitat Conservation Agency, 360 ac (146 ha) by the Bureau of Land Management (BLM), and 600 ac (243 ha) by the Riverside County Parks and Open Space District (Service 2004, p. 61), which manages the Reserve. The Reserve is located within the area north of Lake Skinner and south of Diamond Valley Lake, and includes the Domenigoni Mountains and South Hills (Service 2004, p. 61).

The Reserve is managed through a cooperative management agreement; the Service is a party to this agreement and a member of the five-member committee that makes management decisions (Monroe *et al.* 1992, Appendix B). Management strategies defined for the entire Reserve include:

(1) Protection of habitat from human disturbance through fencing, construction of fire breaks, and patrols to prevent unauthorized access;

(2) Activities to promote the recovery of native plant and animal communities by managing fire and controlling grazing; and

(3) Management for biodiversity, including maintaining a mosaic of different-aged habitats to meet the needs of many species (Monroe *et al.* 1992, pp. ES–5–ES–6).

The 2008 Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10), developed in order to meet management goals for the Reserve, identifies specific enhancement and monitoring goals, objectives, and strategies for *Allium munzii.* These include: (1) Estimating area occupied by *A. munzii* within the Reserve by mapping each occupied area annually, (2) estimating individual plants within the known populations, and (3) enhancing habitat suitability within occupied areas by annually removing thatch and biomass from nonnative vegetation and determining the efficacy of each treatment (Moen 2008, Appendix 10, pp. 1–2).

Benefits of Inclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* by triggering additional review and conservation through other Federal laws. Review of Federal actions affecting designated critical habitat units would consider the importance of this habitat to *A. munzii* and the protections required for the species and its habitat.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

The benefits of excluding from designated critical habitat the 87.5 ac (35.4 ha) of proposed critical habitat for *Allium munzii* within the Reserve are significant and include:

(1) Continued and strengthened effective working relationships with the signatories to the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement and other interested stakeholders in implementing the conservation management objectives for *A. munzii* and its habitat identified in the Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10), described above, and promoting the conservation of this species and its habitat; (2) encouragement of other entities within the range of *A. munzii* to complete cooperative management agreements; and (3) encouragement of additional conservation plan development in the future on other private lands for other federally listed species. In addition, because the lands that comprise the Reserve are encompassed within the boundaries of the Western Riverside County MSHCP as PQP lands, we see the continued and strengthened effective working relationships with the larger Western Riverside County MSHCP and its jurisdictions and stakeholders in promoting the conservation of *A. munzii* and its habitat as an important benefit of exclusion of proposed Subunit 4C—Bachelor Mountain and Unit 5—North Domenigoni Hills.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

We have reviewed and evaluated the exclusion of approximately 87.5 ac (35.4 ha) of proposed critical habitat for *Allium munzii* that are within the boundaries of the Reserve established through the Southwestern Riverside County Reserve Cooperative Management Agreement. The benefits of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement and under the Act. The Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and help achieve recovery of this species through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Reserve boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii.* Although the majority of the Reserve is not open to the public, three trails are available during certain times of the year for hiking and horseback riding activities. These trails provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *A. munzii,* as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Reserve. In addition, the previous rulemaking for this species has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and the location of areas containing the physical or biological features essential to the conservation of the species.

Exclusion of these lands from critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement. These

partnerships are focused on conservation of multiple species, including *Allium munzii,* and secure conservation benefits for the species that will lead to recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships aid in fostering future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of specifying areas within the Reserve as critical habitat and balancing the benefits of excluding these areas from critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

We have determined that the exclusion of 87.5 ac (35.4 ha) of lands managed under the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement from the final designation of critical habitat for *Allium munzii* will not result in the extinction of *A. munzii.* Conservation measures identified in the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement (Monroe *et al.* 1992, Appendix B) and the 2008 Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10, pp. 1–2) for *A. munzii* and its habitat provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of *A. munzii.*

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation for *Allium munzii* proposed Subunit 4C—Bachelor Mountain (79.3 ac (32.1 ha)) and Unit 5—North Domenigoni Hills (8.2 ac (3.3 ha)), which are encompassed within lands managed under the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR 23008; April 17, 2012) opened on April 17, 2012, and closed on June 18, 2012. We also requested comments on the proposed revised critical habitat designations and associated DEA for the two taxa during a comment period that opened September 11, 2012, and closed on October 11, 2012 (77 FR 55788; September 11, 2012). We did not receive any requests for a public hearing during these comment periods. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods.

During the first comment period, we received seven comment letters, three from peer reviewers, three from State and local agencies (one of these letters was a duplicate), and one from the public directly addressing the proposed revised critical habitat designations. During the second comment period, we received three agency comment letters (again, one of these letters was a duplicate) addressing the proposed revised critical habitat designations or the DEA. No public comments were received during the second comment period. All substantive information provided during comment periods has either been incorporated directly into the final determinations for both taxa or addressed below. Comments we received are grouped into general issues specifically relating to the proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior.*

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with *Allium munzii* and *Atriplex coronata* var. *notatior,* the geographic region in which the two plants occur, and conservation biology principles relevant to the two plants. We received responses from all three peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule as discussed in more detail below. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) Comment: We received comments from two peer reviewers regarding our exclusion process under section 4(b)(2) of the Act. One reviewer recommended that the Service weigh the benefits of inclusion versus exclusion by thoroughly analyzing the implementation and conservation success of the relevant HCPs and make a determination whether or not to exclude based on specific conditions applicable to that unit or subunit. A second reviewer stated that species exclusions should be made on a case-by-case basis and the proposed rule needs to outline a stronger case for exclusion.

Our Response: The Secretary's decision regarding whether to exercise his discretion to exclude areas from critical habitat is not made in the proposed rule, but in the final rule. In the proposed rule, we provided the then available information regarding potential exclusions to allow the peer reviewers and the public an opportunity to comment. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of designating a particular area as critical habitat, unless the failure to designate will result in the extinction of the species. Before the Secretary exercises his discretion to exclude any area from critical habitat, he carefully weighs the benefits of exclusion of an area from critical habitat versus the benefits of inclusion of an area in critical habitat.

In the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this final rule, we provide additional discussion of the implementation of the Western Riverside County MSHCP and other conservation plans and partnerships and why we believe, for the areas excluded from final designation, these plans adequately provide for the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior,* and their habitats. This section also fully discusses the benefits of inclusion and exclusion for these areas and the reasons why the Secretary is exercising his discretion to exclude the areas from final critical habitat designation.

(2) Comment: Two peer reviewers provided recommendations on how the proposed revised critical habitat units should be defined in order to address essential habitat. Specific comments were provided by one peer reviewer regarding our proposed designation of critical habitat for Subunits 2D—Alberhill Creek and 4C—Bachelor Mountain for *Allium munzii,* who also recommended a detailed review of proposed subunits within Estelle Mountain and Temescal Wash, stating that the expansion of urban development and other activities in this region warrant additional evaluation of all areas that might be potentially essential habitat for this species.

Our Response: We reviewed our methods for determining subunit boundaries, occupancy, and the presence of the physical or biological features essential to the conservation of the two plants. As described above in the *Criteria Used to Identify Critical Habitat* section for *Allium munzii,* we conducted a spatial analysis using a GIS-based approach to determine the percent of mapped clay soils (Altamont, Auld, Bosanko, and Porterville) that were converted or lost to agricultural or urban land uses in the Riverside-Perris area (based on 2007 land use GIS data). Based on the narrow endemism of this species, its reliance on clay soil types that are limited in geographic range in western Riverside County, and our estimated loss of 67 percent of these soils to urban or agricultural development, we determined that all of the proposed units and subunits represent the present geographical area containing the physical or biological features essential to the conservation of this species that may require special management considerations or protection. For *Atriplex coronata* var. *notatior,* we improved our mapping methodology from previous delineations to more accurately define the critical habitat boundaries that better represent those areas that possess the physical or biological features essential to the conservation of this taxon using soils, elevation, and spatial configuration based on updated plant location information. Thus, we delineated boundaries using an intersection of seasonal ponding or flooding (and resulting bare soils), as observed in historical and recent aerial photographs (Riverside County Flood Control District photos from 1962, 1974, 1978, 1980, and 2010), with *A. c.* var. *notatior* soil preferences (using soil maps from Knecht 1971). This delineation also includes the CNDDB-defined EOs and locations of individual plants reported from other surveys.

In addition, we note that the areas proposed as critical habitat in the proposed revised rule may not include all of the habitat that may eventually be determined as necessary for the recovery of *Allium munzii* (or *Atriplex coronata* var. *notatior*), and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act. These protections and conservation tools will continue to contribute to recovery of both taxa.

Per the peer reviewer's specific comments on Subunits 2D—Alberhill Creek and 4C—Bachelor Mountain for *Allium munzii,* we confirmed that Subunit 2D—Alberhill Creek as defined in the proposed rule contains Altamont cobbly clay soil (PCE 1), and not alkaline soils. We also reevaluated proposed Subunit 4C—Bachelor Mountain and concluded that the subunit boundaries were created appropriately using the defined PCEs for this species.

(3) Comment: All three peer reviewers provided editorial comments, corrections, and recommendations for changes to the Background section (description, biology and life history, habitat and soil preferences, spatial distribution, historical range, and population size) of the proposed rule.

Our Response: We appreciate the suggestions and clarifying information provided by the peer reviewers and the opportunity to incorporate the best available scientific information into the final rule. We provide a summary of these clarifications below based on the peer review comments. However, this information has not altered our determinations or delineation of critical habitat units for *Allium munzii* or *Atriplex coronata* var. *notatior.* In addition, the information provided by the peer reviewers is related to a section of the proposed revised rule that is not repeated in this final rule. However, we have made use of this information in other sections of this final rule, where appropriate, and will similarly use this information in future actions related to the two taxa.

- The references used in the description heading of our Background section in the proposed rule for both *A. munzii* and *A. c.* var. *notatior* have been updated with the 2012 publication of *The Jepson Manual: Vascular Plants of California,* second edition (University of California Press, Berkeley, California). The proposed rule cited both the McNeal (2012) for the treatment of the family Alliaceae, which includes *A. munzii,* described within pages 1289–1297 of the second edition, but we also cited an earlier published review of this species (McNeal 1992). The Taylor and Wilken (1993) citations for *A. c.* var. *notatior* are now Zacharias (2012) for the treatment of the family Chenopodiaceae, which includes *A. c.* var. *notatior,* described within pages 629–638 of the second edition.
- In our Habitat and Soil Preferences section for *A. munzii,* we received a clarification from one peer reviewer of our reference to the mesic (wet) clay soils in which this species is found. As noted by this reviewer, these soils are subject to hot dry summers that are characteristic of Mediterranean climate found in southern California and are dry much of the year.
- As noted by one peer reviewer, the geographical description of the range of *A. munzii* in Riverside County is better described as a narrow endemic plant that is discontinuously distributed across the Riverside-Perris area (Perris Basin physiogeographic region) and within a portion of the southern Santa Ana Mountains (Elsinore Peak). We have incorporated this description into this final rule, as appropriate.
- Two peer reviewers indicated that the term Upper Salt Creek should be used in place of Old Salt Creek in the Background or other sections where it occurs in the proposed rule; the latter geographic name is apparently an outdated term used to describe early locations of *A. c.* var. *notatior.*
- One peer reviewer recommended that we discuss the importance of clonal populations for *A. munzii.* We note that all known bulb- and corm-forming plant taxa are expected to exhibit a clonal population structure derived from the vegetative reproduction of the bulbs or corms. However, we did not consider it necessary to discuss this in the Background section of the proposed rule as it does not change our criteria or methodology for designating critical habitat.
- Based on peer review comment we received on the Background section of the proposed rule regarding our habitat description for *A. c.* var. *notatior,* we are providing the following information due to confusion in terms that have been used to describe the habitats and locations where this taxon is found. *Atriplex coronata* var. *notatior* is found in several herbaceous vegetation

alliances and associations (Klein and Evens 2005, pp. 60–62; Sawyer *et al.* 2009, pp. 871–872, 939–940), as well as shrubland alliances (Klein and Evens 2005, p. 237) of western Riverside County. Alliances are considered generic units of vegetation based on a dominate or diagnostic species presence, whereas associations are subdivisions of alliances based on characteristic understory or associated taxa (Klein and Evens 2005, p. 9). *Atriplex coronata* var. *notatior* is associated with herbaceous vegetation identified as: *Centromadia* (as *Hemizonia*) *pungens* subsp. *laevis* Unique Stands, *Hordeum depressum* Alliance, *Lasthenia californica* Alliance, *Plagiobothrys leptocladus* Unique Stands, and Vernal Alkali Plain, Vernal Alkali Playa, and Vernal Pool Habitats (Klein and Evens 2005, pp. 254, 256, 260, 267, 274). It is also associated with the shrubland alliance *Suaeda nigra* (as *moquinii*) Alliance (Klein and Evens 2005, p. 238). Sawyer *et al.* describes vegetation on a State-wide basis and, unlike Klein and Evens, these descriptions are not based directly on survey results. Sawyer *et al.* (2009, pp. 850, 871, 940) recognize some of these vegetation types as *Centromadia* (*pungens*) Herbaceous Alliance, *Deinandra fasciculata* Herbaceous Alliance, and *Lasthenia californica-Plantago erecta-Festuca* (as *Vulpia*) *microstachys* Herbaceous Alliance. The two references cited above accommodate the known habitats associated with *A. c.* var. *notatior,* such as alkali plain, alkali playa, and vernal pool habitats, as described in the proposed rule, but generally do not include sage scrub. However, the nomenclature for habitat descriptions may differ between these two references and previously cited references.

(4) Comment: We received a comment from one peer reviewer on our discussion in the Background section for *Atriplex coronata* var. *notatior* in the proposed revised rule regarding surveys for this taxon along the San Jacinto River in 2000. The commenter stated that soil amendments in this area since those surveys have impacted *A. c.* var. *notatior;* therefore, these earlier surveys do not accurately represent the current population status of this taxon.

Our Response: We acknowledge the comment and the information provided as to activities that may have impacted populations of *Atriplex coronata* var. *notatior* in proposed Unit 1–San Jacinto River. As noted in the proposed rule, there have been no other comprehensive surveys for this taxon since the time of listing to estimate current population status. We used the best available information when determining the areas that meet the definition of critical habitat. We used a number of sources of information to define the boundaries for proposed Unit 1–San Jacinto River based on the physical or biological features essential to the conservation of this taxon, including, but not limited to, the results from the survey conducted in 2000.

(5) Comment: Two peer reviewers provided comments regarding our discussion in the Background section for *Atriplex coronata* var. *notatior* in the proposed revised rule clarifying other co-occurring native and nonnative *Atriplex* taxa as well as the seed viability of *A. c.* var. *notatior.*

Our Response: We appreciate the information provided by the peer reviewers regarding other *Atriplex* taxa and seed viability. As appropriate, we have incorporated this information into sections of this rule, and will similarly use this information in future actions related to this taxon.

(6) Comment: One peer reviewer indicated that the PCEs for *Atriplex coronata* var. *notatior* appeared to be accurately described.

Our Response: We appreciate the comment on this section of the rule, which was revised from the previous proposed rule (2004) to better reflect the PCEs for this taxon.

(7) Comment: Two peer reviewers provided comments on the *Special Management Considerations or Protection* section of the proposed rule. One reviewer indicated that the manure dumping along the San Jacinto River should be more thoroughly discussed in the proposed rule, stating that this activity is the greatest threat to *Atriplex coronata* var. *notatior.* The second peer reviewer indicated that a more thorough analysis of management considerations for both taxa should have been included in this section, and that the critical habitat unit and subunit descriptions should include more detail in order to evaluate management issues within the units and subunits.

Our Response: We appreciate the concerns of the peer reviewers relative to impacts to *Atriplex coronata* var. *notatior* from soil amendment activities along the San Jacinto River. The issue of soil amendments, including manure dumping, was discussed in the proposed rule (Unit 1—San Jacinto River, 77 FR 23027–23028; April 17, 2012) and in our 2008 and 2012 5-year reviews for *A. c.* var. *notatior* (Service 2008, pp. 6–10, 16; Service 2012b, pp. 17, 19). In our proposed rule, we also provided a discussion of the specific threats for proposed critical habitat units for *A. c.* var. *notatior* in our Proposed Revised Critical Habitat Designation section (77 FR 23027—23029; September 11, 2012). A summary of these threats was provided in the *Special Management Considerations or Protection* section of the proposed rule (77 FR 23018; September 11, 2012). The peer reviewer's comment has also been provided to Service biologists overseeing implementation of conservation measures for *A. c.* var. *notatior* that are identified in the Western Riverside County MSHCP.

(8) Comment: We received one comment on the Summary of Changes section. The commenter noted our discussion of the transplantation of some populations of *Allium munzii* within the proposed Subunit 2A–Sycamore Creek and requested that the proposed designation describe policies and procedures for allowing transplantation or reseeding of both taxa and how they would meet the criteria for conserving both these species and their habitats.

Our Response: In our proposed critical habitat rules, we generally do not provide specifics on State laws or conservation measures implemented for endangered plants as a result of previous section 7 consultations. A discussion of existing Federal and State regulatory mechanisms for both taxa can be found in our final listing rule (63 FR 54975; October 13, 1998).

(9) Comment: Two peer reviewers commented on the maps included in the proposed rule identifying the units and subunits of critical habitat. Both reviewers recommended that the Service provide to the peer reviewers more detailed overlays that better describe the proposed revised critical habitat boundaries in order to better evaluate the proposed areas.

Our Response: The maps in the proposed rule were prepared for publication in the **Federal Register**, and were prepared in accordance with Code of Federal Regulations (CFR) (at 50 CFR 17.94(b), 424.12(c), and 424.16(b) and (c)(1)(ii)) for publishing textual and mapping descriptions of proposed critical habitat boundaries in the **Federal Register**. However, detailed spatial data for the critical habitat units for these taxa and other endangered or threatened species within the jurisdiction of the Carlsbad Fish and Wildlife Office are available to the public in number of ways: (1) Through a zip file that can be downloaded at our Web site, (2) by visiting the Field Office directly, or (3) through a CD mailed directly to the requester. In the future, we will notify peer reviewers of the locations of this more detailed spatial

data during our peer review request process.

(10) Comment: Two peer reviewers provided comments expressing their disappointment in the areas identified in the proposed rule for consideration of exclusion within the Western Riverside County MSHCP area as critical habitat, for both *Allium munzii* and *Atriplex coronata* var. *notatior.* One peer reviewer stated that, as of 2012, 8 years after the Western Riverside County MSHCP was signed, there was little real on the ground conservation, protection, or management for *A. c.* var. *notatior.* Another peer reviewer stated that the proposed designation does not document how these plans would conserve or manage these proposed critical habitat areas and does not address the issue of the long-term viability of these proposed subunits, including maintaining hydrological processes.

Our Response: As noted in our response to Comment 1 above, the Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impacts if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. We concluded that the benefits of exclusion outweigh the benefits of inclusion for lands covered under the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement. A detailed discussion for this determination is provided in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above. Specifically, we noted in that section that three parcels of lands within the proposed critical habitat designation for *A. c.* var. *notatior* have been purchased since 2004, and have been incorporated into the Western Riverside County MSHCP Reserve and, since 2004, only 10 ac (4 ha) of habitat in the Upper Salt Creek areas have been lost (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). These actions provide support for the effectiveness of the Western Riverside County MSHCP in reducing the threats to *A. c.* var. *notatior* and in addressing the special management considerations or protections necessary to ensure the long-term existence of the physical or biological features essential to the conservation of this taxon.

In the case of plants such as *Allium munzii* and *Atriplex coronata* var. *notatior,* we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan (where no Federal nexus exists) is voluntary. In contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including (1) narrow endemic plant species, such as *A. munzii,* and (2) those with limited geographic distribution and specialized habitat and management requirements, such as *A. c.* var. *notatior,* through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Western Riverside County MSHCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by Riverside County to protect *A. munzii* and *A. c.* var. *notatior* under this plan.

Also included in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above is a summary of the management actions defined in the Western Riverside County MSHCP to be implemented for the two taxa that provide for conservation of the physical or biological features essential to the conservation of the taxa, including maintaining and enhancing the floodplain processes of the San Jacinto River, Mystic Lake and upper Salt Creek hydrological processes located within Unit 1—San Jacinto River and Unit 2—Upper Salt Creek for *A. c.* var. *notatior.*

(11) Comment: One peer reviewer recommended that the proposed rule should have provided greater consideration of populations of *Atriplex coronata* var. *notatior* along the San Jacinto River floodplain that occupy intact alkali habitat because of concerns regarding changes in land uses in certain areas along the San Jacinto River. More specifically, the populations that occur within the San Jacinto Wildlife Area on these soils may provide an important seed source for the lower portions of the San Jacinto River.

Our Response: We appreciate the comment and the recommendation for proposed Unit 1—San Jacinto River. In defining the proposed critical habitat boundaries for Unit 1—San Jacinto River unit, including the area contained within the San Jacinto Wildlife Area, we evaluated the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior,* including PCE 2, the alkaline soils (primarily the Willows soil series) that are found in this region, and PCE 1, wetland habitat including floodplains and vernal pools. We determined that Unit 1—San Jacinto River provides habitat and hydrological conditions (PCE1b) that can serve as a potential seed source for areas downstream from the San Jacinto Wildlife Areas. As noted in our response to Comment 2 above, the identification of the areas meeting the definition of critical habitat in the proposed revised rule may not include all of the habitat that may eventually be determined to be necessary for the recovery of *A. c.* var. *notatior,* and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act.

(12) Comment: One peer reviewer stated that the [draft] economic analysis of the proposed revised critical habitat designation should have been provided concurrently with the publication of the proposed rule.

Our Response: We published our proposed critical habitat rule in accordance with regulations in effect at the time of publication (50 CFR 424.19). On August 24, 2012, Service and the National Marine Fisheries Service published in the **Federal Register** a proposed rule to amend our implementing regulations at 50 CFR 424.19 to clarify the instructions for making information available to the public, considering the impacts of critical habitat designations, and considering exclusions from critical habitat (77 FR 51503). These changes are being proposed as directed by the President's February 28, 2012, memorandum, which directed the Secretary of the Interior to revise the regulations implementing the Act to provide that a DEA be completed and

made available for public comment at the time of publication of a proposed rule to designate critical habitat. That August 24, 2012, proposed rule accepted public comments for 60 days, ending October 23, 2012. The comment period on the August 24, 2012, proposed rule was then reopened from November 8, 2012, to February 6, 2013 (77 FR 66946; November 8, 2012), to allow all interested parties additional time to review and comment on that proposed rule. The proposed revised critical habitat designation was developed prior to the publication of this proposed amendment to our implementing regulations, and the proposed amendment has not been finalized; therefore, we followed the past practice of making available the DEA after the proposed designation of critical habitat had published.

Public Comments

(13) Comment: We received one public comment during the first comment period supporting the exclusion of lands from the critical habitat designations on the basis of operative HCPs described in the proposed rule as long as the plans are functioning properly and are designed to achieve recovery goals, but the commenter noted that non-permittees should not have this benefit. In addition, this commenter suggested that the Service, in our exclusion analysis, should evaluate whether a non-permittee can ''interfere'' with a permittee's ability to achieve the HCP's conservation goals and objectives for *Allium munzii* and *Atriplex coronata* var. *notatior,* asking whether the Service can foresee any non-participating entities in the plan area with such potential for interference. Further, the commenter suggested that our exclusion determinations for these HCPs under section 4(b)(2) of the Act should not focus on the Western Riverside County MSHCP Implementing Agreement (which the commenter stated required the Federal Government to exclude its covered areas from critical habitat designation), but rather on an analysis that accounts for interfering actions of non-permittees that holds permittees ''harmless'' against any additional funding or mitigation for future critical habitat designations beyond those already contained within the HCP.

Our Response: We appreciate the comment supporting our consideration of exclusions under section 4(b)(2) of the Act based on implementation of the Western Riverside County MSHCP and other conservation plans and partnerships. In the Exclusions Based on Other Relevant Impacts section of this rule, we discuss implementation of the Western Riverside County MSHCP and other conservation plans and partnerships, and the provisions in these plans that provide significant benefits for the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior* and their habitats.

However, our analysis did not focus on the IA for the Western Riverside County MSHCP, and we note that the IA, as described in the public comment, does not *require* the Federal Government to exclude from critical habitat those areas managed and controlled under this HCP. Moreover, we cannot anticipate non-participating entities nor reasonably conduct a specific analysis that accounts for potential interfering actions of non-permittees and their non-covered activities relative to implementation of the Western Riverside County MSHCP or other HCPs that are described in the proposed rule. Under the IA, the implementation responsibility of the Western Riverside County MSHCP is held by the Western Riverside County Regional Conservation Authority and the other permittees. In addition, the Service's Biological and Conference Opinion for the issuance of the Western Riverside County MSHCP permit under section 10(a)(1)(B) of the Act contains a provision for reinitiation of consultation if, for example, new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the opinion (Service 2004).

Comments From Local Agencies

(14) Comment: Two local agencies provided comment letters in the first public comment period supporting our exclusion under section 4(b)(2) of the Act of all permittee-owned or controlled lands that fall within the boundaries of the Western Riverside County MSHCP. Specifically, one commenter supports the exclusions of lands within the Western Riverside County MSHCP because it fosters important and beneficial relationships for creating future HCPs for conserving species habitat.

Our Response: We appreciate the comment supporting our consideration of exclusions under section 4(b)(2) of the Act. The Secretary may exercise his discretion to exclude an area from critical habitat designation under section 4(b)(2) of the Act if he concludes that the benefits of excluding an area outweigh the benefits of designation. Areas are not excluded based solely on the existence of management plans or other conservation measures; however, we acknowledge the existence of a plan may reduce the benefits of including an area in the critical habitat designation to the extent that the protections provided under the plan may be comparable with conservation benefits of the critical habitat designation. Moreover, in some cases the benefits of exclusion in the form of sustaining and encouraging partnerships that result in on the ground conservation of listed species may outweigh the incremental benefits of inclusion. In this case, we agree with the commenter that excluding areas covered by the Western Riverside County MSHCP will foster our partnership. We have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude these areas from final critical habitat designation.

(15) Comment: One local agency stated that existing or proposed drainage facilities operated and maintained by the Riverside County Flood Control and Water Conservation District within permittee-owned or -controlled lands within the boundaries of the Western Riverside County MSHCP would be negatively impacted if included in the critical habitat designation, and recommended that existing and proposed flood control facilities should be clearly excluded as proposed critical habitat. The commenter also stated that the existing manmade drainage features and structures do not contain some or all of the PCEs essential to the conservation of *Allium munzii* or *Atriplex coronata* var. *notatior.*

Our Response: As described above in the *Criteria Used to Identify Critical Habitat* section, when determining critical habitat boundaries, we made every effort to avoid including developed areas and related infrastructure because these lands lack the physical or biological features necessary for the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior.* To identify existing flood control features, proposed critical habitat unit boundaries were determined at an appropriate scale (1:4000 or less) using 2010 U.S. Department of Agriculture (USDA) National Agriculture Imagery Program aerial photography. No existing artificial canals are located within proposed critical habitat units or subunits for *A. munzii.* For *A. c.* var. *notatior,* we removed existing artificial canals when mapping proposed critical habitat, to the extent practicable. Any such lands

that are inadvertently left inside the critical habitat boundaries due to the scale of mapping required for publication in the Code of Federal Regulations have been excluded by text in the proposed and final rules and are not designated critical habitat. However, we are not designating critical habitat for *A. c.* var. *notatior.* We did not receive a map from this commenting agency identifying specific locations of proposed flood control facilities.

(16) Comment: One local agency, a permittee of the Western Riverside County MSHCP, stated that the plan provides several species-specific, regional objectives to ensure the long-term conservation of *Allium munzii* or *Atriplex coronata* var. *notatior.* In addition, the commenter stated that because they and other permittees are subject to applicable provisions of the plan, including the requirement to contribute mitigation funding to help accomplish the regional conservation objectives, they and other permittees will ensure that the two plant taxa will be conserved on a regional basis as intended when the Service authorized the final Western Riverside County MSHCP.

Our Response: As discussed in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of both the proposed revised rule and this final revised rule, the Western Riverside County MSHCP provides a comprehensive, habitat-based approach to the protection of covered species, including *Allium munzii* and *Atriplex coronata* var. *notatior,* by focusing on lands essential to the long-term conservation of the covered species and appropriate management of those lands (Western Riverside County Regional Conservation Authority *et al.* 2003, p. 51). In addition, the Western Riverside County MSHCP includes management actions and specific conservation objectives for both *A. munzii* and *A. c.* var. *notatior.* We agree with the commenter's conclusion that these objectives were based on a landscape-level approach to conservation and management, and provide ongoing protection and monitoring to these taxa and their habitats that benefit their long-term conservation. We have determined that the benefits of exclusion outweigh the benefits of inclusion for permittee-owned or -controlled lands within the Western Riverside County MSHCP boundaries, and the Secretary is exercising his discretion to exclude lands these areas from final critical habitat designation.

(17) Comment: Two local agencies stated that designating new critical habitat within the Western Riverside County MSHCP boundaries for *Allium munzii* or *Atriplex coronata* var. *notatior* would create duplicative regulatory efforts or redundant regulation with negligible, if any, benefits to the two taxa. Further, one of these commenters indicated that designating critical habitat for *A. munzii* or *A. c.* var. *notatior* within the Western Riverside County MSHCP area would undermine future support of this HCP, while excluding these lands fosters important and beneficial relationships for creating and implementing HCPs that conserve species and their habitats.

Our Response: We appreciate the comments and have considered them in our analysis under section 4(b)(2) of the Act of the areas covered by the Western Riverside County MSHCP. In this final rule, we have determined that the benefits of exclusion outweigh the benefits of inclusion for lands covered by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude these areas from final critical habitat designation. Please see the discussion in the Exclusions Based on Other Relevant Impacts section.

(18) Comment: Two local agencies provided comments specific to the IA for the Western Riverside County MSHCP. One commenter cited section 14.10 of the IA, which states, in part, that ''The USFWS agrees that, to the maximum extent allowable after public review and comment, in the event that a Critical Habitat determination is made for any Covered Species Adequately Covered, and unless the USFWS finds that the MSHCP is not being implemented, lands within the boundaries of the MSHCP will not be designated as Critical Habitat.'' The other commenter stated the IA prohibits the Service from changing its position, and changed conditions do not exist nor have any changed conditions been cited by the Service since 2005 that would necessitate or allow the Service to now designate critical habitat for the two taxa on Western Riverside County MSHCP lands.

Our Response: The IA does not preclude critical habitat designation within the plan area (Dudek 2003, p. 6–109; Western Riverside County RCA *et al.* 2003, p. 51). Consistent with our commitment under the IA, and after public review and comment on the proposed revised rule to designate critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior,* we performed a balancing analysis for the areas covered by the Western Riverside County MSHCP under section 4(b)(2) of the Act. We determined through our analysis that the benefits of excluding lands owned and controlled by permittees under the Western Riverside County MSHCP outweigh the benefits of designating these areas, and the Secretary is exercising his discretion to exclude these areas from critical habitat designation. (See the discussion in *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above for a detailed discussion of this exclusion analysis).

(19) Comment: One local agency commented that if new critical habitat was designated in Riverside County, the final rule should provide clear guidance related to section 7 consultations that provides written documentation of compliance with the Western Riverside County MSHCP from a permittee so as to allow the Service to either make a ''no effect'' determination or consult informally and in streamlined manner with the permittee. The commenter added that additional mitigation beyond that required by the Western Riverside County MSHCP should not be required.

Our Response: In this final rule, we have designated revised critical habitat in Riverside County only for *Allium munzii,* Elsinore Peak Unit, which is within the general boundaries of the previous designation at this location (70 FR 33015; June 7, 2005). As noted in the Final Critical Habitat Designation section above, 35.3 ac (14.3 ha) of the Elsinore Peak Unit, or about 36 percent, are owned and managed by the California State Lands Commission. The remaining 63.1 ac (25.5 ha) are owned and managed by the U.S. Forest Service. Neither of these agencies are permittees of the Western Riverside County MSHCP. As noted in our FEA, any future section 7 consultations would likely only apply to activities on Federal lands (IEC 2012, pp. 4–5 (Exhibit 4–3), 4–9—4–10, 4–11).

(20) Comment: One local agency urged the Service to exclude all areas covered by the Western Riverside County MSHCP from designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* based on protections afforded the two taxa and their habitat by provisions contained within the Western Riverside County MSHCP. The commenter submitted text from the Western Riverside County MSHCP summarizing the landscape-level conservation, site-specific considerations for known locations of these species, and species-specific

management considerations for other locations in support of the plan's ability to provide superior and comprehensive protections for *A. munzii* or *A. c.* var. *notatior* and their habitats.

Our Response: See our response to Comments 10 and 14 above.

(21) Comment: One local agency stated that they agree with the Service's prior assessments of exclusion of critical habitat for the two taxa (proposed and final critical habitat rules) noting that the Service has already found that the Western Riverside County MSHCP is sufficient for the conservation and recovery of the two taxa in these assessments, and that excluding the Western Riverside County MSHCP area is consistent with these prior exclusions of areas within the MSHCP for numerous other species' critical habitat designations.

Our Response: Section 4(b)(2) of the Act requires us to make critical habitat decisions on the basis of the best available scientific and commercial information at the time the rule is made. Therefore, when designating critical habitat, if the Secretary exercises his discretion to conduct a weighing analyses under section 4(b)(2) of the Act, it is based on the best scientific and commercial information then available, not on decisions made in previous critical habitat rules. As described in our *Criteria Used to Identify Critical Habitat* section above, in determining which areas meet the definition of critical habitat, we considered information provided in our 5-year reviews for *Allium munzii* and *Atriplex coronata* var. *notatior;* CNDDB records; reports submitted during consultations under section 7 of the Act; analyses for individual and regional HCPs where *A. munzii* and *A. c.* var. *notatior* are covered species; data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; information received from local species experts; published and unpublished papers, reports, academic theses, or surveys; GIS data (such as species population and location data, soil data, land use, topography, aerial imagery, and ownership maps); and previous peer review comments and other correspondence with the Service from recognized experts, some of which has have been published since the 2005 critical habitat designations.

(22) Comment: One local agency referenced a letter from the Pacific Southwest Regional Director (dated May 21, 2011) to the Western Riverside County RCA, quoting from the letter that ''no critical habitat will be designated within the MSHCP unless there are compelling reasons . . .'' The commenter states that there is no compelling reason for designating critical habitat for *Allium munzii* or *Atriplex coronata* var. *notatior* within the boundaries of the Western Riverside County MSHCP because the plan and its IA are being implemented and provide protections for the species and their habitat within the plan area.

Our Response: The Western Riverside County MSHCP and its IA indicate that exclusion of permittee-owned and -controlled lands from critical habitat is likely, but these are not guaranteed assurances. As described in a recent court decision (*Bear Valley Mutual Water Co. et al.* v. *Salazar et al.,* SACV 11–01263 (C.D. Cal., decided October 17, 2012)), if these assurances were construed to be so rigid, then they might be beyond the Service's authority because this interpretation would excuse the Service's congressionally mandated duty under section 4 of the Act. Regardless, we have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP, and, based on the discussion of the Western Riverside County MSHCP under the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships,* the Secretary is exercising his discretion to exclude lands covered by the Western Riverside County MSHCP from final critical habitat designation.

(23) Comment: One local agency stated that *if* areas in Riverside County are included in the final revised critical habitat rule, an economic analysis should evaluate both tangible and intangible economic costs associated with the conflicts between the final rule and approved Western Riverside County MSHCP.

Our Response: As described in the Final Critical Habitat Designation section of this final rule, we are designating critical habitat only for *Allium munzii* on lands that are owned and managed by non-permittees of the Western Riverside County MSHCP. In addition, we determined in our FEA (IEC 2012b) that any economic costs for critical habitat designations for either taxon would be restricted to administrative costs for any new or reinitiated consultations.

(24) Comment: One local agency that maintains and operates a supplemental public water supply system for the southern California coastal plain expressed concern over our proposed designation and likely effects to its operation of water transmission and storage facilities on or adjacent to areas proposed as critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* The commenter stated that the repair and maintenance of these facilities will require access to areas identified in the proposed critical habitat designation in order to maintain safe and efficient operation of the system. Therefore, the agency requested that we exclude all lands covered by the Western Riverside County MSHCP, the Southwestern Riverside County MSHCP, and the Lake Mathews MSHCP/NCCP within the following unit and subunits: Subunit 4B—Skunk Hollow, Subunit 4C—Bachelor Mountain, and Unit 5—North Domenigoni Hills for *A. munzii,* and Unit 1—San Jacinto River and Unit 2—Upper Salt Creek for *A. c.* var. *notatior.*

Our Response: We appreciate the information provided by the agency regarding its mission and need for access to maintain and operate this public water supply system. In this final rule, we have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude lands within these areas from final critical habitat designation (see our analysis in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this rule). This exclusion includes all of the proposed critical habitat units and subunits for *Allium munzii* and *Atriplex coronata* var. *notatior* identified in the agency's comment.

(25) Comment: One local agency requested that we exempt all of a public agency's operational rights-of-way from our critical habitat designation process based on their need to maintain and operate a public water supply system.

Our Response: Under the Act, exemptions from critical habitat are provided only under section 4(a)(3). Specifically, the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical

habitat is proposed for designation.'' The lands requested for exemption do not fall within this definition. However, the rights-of-way areas identified by the public agency are within areas that are being excluded (not exempted) from final critical habitat designation (see our response to Comment 24).

(26) Comment: One local agency commented on the September 11, 2012, publication (77 FR 55788) regarding our correction in elevation for PCEs 2(i)(B) and (2)(ii) for *Allium munzii,* particularly its relationship to our proposed critical habitat designation of Elsinore Peak Unit (Unit 3—Elsinore Peak of the proposed rule). The agency stated that the September 11, 2012, publication (77 FR 55788) revised the previously reported boundaries for the unit, and requested that these ''newly identified lands'' be considered for exclusion based on previous comments provided for the April 17, 2012, proposed rule (77 FR 23008).

Our Response: The September 11, 2012, publication did not revise the boundaries of any proposed critical habitat units or subunits for *Allium munzii* (77 FR 55790). The proposed revision only provided a correction to the textual description of the upper elevation for these two PCEs. The proposed Elsinore Peak Unit (Unit 3) boundary did not change as a result of this correction. As to the comment requesting consideration for exclusion of the Elsinore Peak Unit (based on comments previously submitted by this commenter regarding the Western Riverside County MSHCP, see Comments 14, 17, and 20 above), we indicated in our proposed rule that Elsinore Peak Unit (Unit 3) contains lands owned and managed by the U.S. Forest Service or the California State Lands Commission. As discussed in the Final Critical Habitat Designation section (for *A. munzii*) of this final rule, the U.S. Forest Service and the State Lands Commission are not permittees under the Western Riverside County MSHCP; therefore, land use activities implemented by these entities are not considered covered activities under the plan. Only discretionary actions under the control of a permittee are covered activities under the Western Riverside County MSHCP. In addition, the lands owned and managed by the State Lands Commission within this critical habitat unit are not included as part of the conceptual reserve design of the Western Riverside County MSHCP. In this final rule, we have not excluded areas within Elsinore Peak Unit from critical habitat designation under section 4(b)(2) of the Act.

Public Comments on the Draft Economic Analysis

(27) Comment: One local agency commented on our discussion of clay mining activities and protections afforded to *Allium munzii* under the Western Riverside County MSHCP (see DEA (IEC 2012a, pp. 3–5–3–6, 4–1) and 77 FR 55791, September 11, 2012). The commenter disagreed with our determination that there is some dispute as to whether local permittees have jurisdiction over clay mining for the plan as described in our DEA. The commenter stated that clay mining in new areas not subject to vested rights is covered by the Western Riverside County MSHCP through the local jurisdictions' discretionary authority for reviewing those mining activities.

Our Response: As described in section 3.3 of the DEA, the analysis assumes mining activities will be covered under the Western Riverside County MSHCP in cases where local jurisdictions within the plan area require land use permits. This is consistent with the statement provided in the comment. Any new mining operation proposed within lands covered by the Western Riverside County MSHCP would be required to go through Riverside County's review process and would be subject to the provisions of the Western Riverside County MSHCP. However, entities who have existing permits are considered exempt from the requirements of the Western Riverside County MSHCP. It is our understanding that Riverside County will make the determination as to the appropriate category for a mining operation. Regardless, the DEA finds that future mining activity is unlikely to occur within proposed critical habitat and does not estimate any incremental impacts to mining activities as a result of critical habitat designation. The FEA includes a note in response to this comment indicating that, in most cases, clay mining is expected to be a covered activity under the Western Riverside County MSHCP (IEC 2012b, p. 3–6).

(28) Comment: One local agency stated that the final rule should consider our determination in the DEA that critical habitat designation in Elsinore Peak Unit (proposed Unit 3—Elsinore Peak) (which the commenter stated contains some Federal lands and California State Land Commission lands outside the jurisdiction of the Western Riverside County MSHCP) would not change the outcome of anticipated consultations for ORV regulation or U.S. Forest Service land management plans. The commenter stated that the Service should find that there is no benefit to designating lands within Elsinore Peak Unit as critical habitat for *Allium munzii.*

Our Response: As a point of clarification to this comment, all lands within the Elsinore Peak Unit are owned and managed by either the U.S. Forest Service or the State Lands Commission. As for our determination of critical habitat designation for Elsinore Peak Unit, please see our response to Comment 26 and discussion in this final rule under the Final Critical Habitat Designation section.

(29) Comment: One local agency commented on our determination of administrative costs for future section 7 consultations within areas covered by the Western Riverside County MSHCP. Specifically, the commenter cited our discussions in the DEA regarding the need for reinitiation of our biological opinion for the Western Riverside County MSHCP, our costs for this reinitiation, and our factoring of these costs into the incremental costs for the proposed critical habitat designations. The commenter stated that these monetary costs add needless red tape and waste where an existing plan (that is, the Western Riverside County MSHCP) already conserves habitat in the same manner provided under section 7 consultations, and therefore adequately protects *Allium munzii* and *Atriplex coronata* var. *notatior.*

Our Response: The commenter is correct that the DEA estimates solely administrative impacts associated with the designation of proposed revised critical habitat for both taxa. The DEA notes in section 3.3 that lands subject to the Western Riverside County MSHCP were then being considered for exclusion as a result of the baseline protections afforded the plants. See our responses to Comments 10 and 14 above regarding our exclusion analysis for the Western Riverside County MSHCP.

(30) Comment: One local agency commented specifically on the DEA discussion of section 7 consultation requirements (Appendix C). The commenter stated that designating critical habitat will essentially result in no change to the consultation process in the proposed critical habitat units because all units are considered occupied and because Federal agencies and project proponents are already required to consult with the Service to ensure actions ''authorized, funded, or carried out will not jeopardize the continued existence of'' *Allium munzii* and *Atriplex coronata* var. *notatior.*

Our Response: The commenter is correct that conservation measures requested by the Service following the designation of critical habitat are, in most cases, likely to be substantially the

same as those requested under the baseline (IEC 2012a, p. 4–2). However, the DEA states that a conservative approach was taken to capture a small level of uncertainty in future consultations where a more extensive effort may be necessary to ensure that a project avoids adverse modification of critical habitat (IEC 2012a, p. ES–8). This would result in an overestimation of these costs (IEC 2012a, p. 4–19). Nevertheless, the DEA (IEC 2012a, p. 4–8) states that the assumption was made that the outcome of a section 7 consultation is unlikely to be affected by the presence of critical habitat, and that direct incremental impacts are likely to be limited to minor administrative costs associated with addressing adverse modification in section 7 consultations.

(31) Comment: One local agency commented on our determination of actions that might trigger an analysis of adverse modification versus those that might be required as ''additional conservation measures'' in a section 7 consultation. The commenter stated that our identification of these potential adverse modification actions should be more than speculation. Further, the commenter stated that the identified conservation measures are already being implemented under the requirements of the Western Riverside County MSHCP. The commenter therefore believes that the final rule should indicate that there is no benefit to designating critical habitat in the Western Riverside County MSHCP area and that the Western Riverside County MSHCP area should be excluded from the critical habitat designations for both *Allium munzii* and *Atriplex coronata* var. *notatior.*

Our Response: Our determination of actions that may require an adverse modification analysis under section 7(a)(2) of the Act are not speculative. We evaluated threats that may require special management considerations or protection of the physical or biological features for both taxa (see the Critical Habitat section above) to identify these activities.

Section 3.3 of the DEA lists general conservation efforts undertaken for activities covered by the Western Riverside County MSHCP, including those described in the comment. The overlap in conservation efforts required by the Western Riverside County MSHCP and those potentially recommended to avoid adverse modification of critical habitat leads to the conclusion in the DEA that critical habitat will have a limited incremental impact on activities covered by the Western Riverside County MSHCP.

We have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP. Based on the discussion of the Western Riverside County MSHCP under the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this rule, the Secretary is exercising his discretion to exclude lands covered by the Western Riverside County MSHCP from final critical habitat designation.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Because no critical habitat is being designated for *Atriplex coronata* var. *notatior,* we are certifying that the final critical habitat determination for that taxon will not have a significant economic impact on a substantial number of small entities. Additionally, in this final rule, we are certifying that the critical habitat designation for *Allium munzii* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (for example, development, agricultural operations, transportation, fire management, mining, recreational activities, flood control, and utilities). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat

designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Allium munzii* and *Atriplex coronata* var. *notatior.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In our FEA of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the incremental impacts of the designation of critical habitat for *Allium munzii.* The analysis is based on the estimated incremental impacts associated with the rulemaking as described in Chapters 1 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Development, (2) agricultural operations, (3) transportation, (4) fire management, (5) mining, and (6) recreational activities.

For *Allium munzii,* our FEA estimated incremental administrative costs for section 7 consultations to review projects covered by existing conservation plans; re-initiated programmatic consultations for all existing conservation plans and agreements; one new formal consultation with the U.S. Forest Service; and one programmatic consultation for revisions to the Cleveland National Forest Land Management Plan Strategy (IEC 2012b, p. A–4). The FEA determined that the following activities are not expected to affect small entities: (1) Review of projects covered by existing conservation plans, (2) re-initiations of three existing conservation plans and agreements, and (3) section 7 consultations involving the U.S. Forest Service (IEC 2012, p. A–4–A–6). However, incremental impacts associated with the remaining re-initiation of section 7 consultation for the Western Riverside County MSHCP may be borne by small entities, and thus were the focus of the FEA threshold analysis.

The FEA presented information on both the number of small entities that may be affected and the magnitude of the expected impacts. Total third-party costs to the 24 permittees of the Western Riverside County MSHCP for re-initiating the consultation of the Western Riverside County MSHCP were estimated at $6,900 (IEC 2012b, p. ES–18). If those costs are spread across all 24 permittees, the per-entity one-time impact is $270 (IEC 2012b, p. A–8). This is not anticipated to present a significant impact to any of the seven small jurisdictions. Even if we applied the most conservative assumption that all of the third-party costs are borne by a single small entity, the one-time impact is 0.2 percent of reported annual revenues (IEC 2012b, p. A–8).

In summary, we considered whether this designation would result in a significant economic impact on a substantial number of small entities. Based on the above reasoning and information in the economic analysis, we are certifying that the designation of critical habitat for *Allium munzii* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our FEA states that the designation of critical habitat for *Allium munzii* is anticipated to result in minor third-party administrative costs of $875 to Southern California Edison (IEC 2012b, p. A–10). This impact is unlikely to increase the cost of energy distribution in excess of one percent.

Thus, based on information in the economic analysis, energy-related impacts associated with *Allium munzii* conservation activities within critical habitat are not expected. As such, the designation of critical habitat for this species is not expected to significantly affect energy supplies, distribution, or use. Because we are not designating any critical habitat for *Atriplex coronata* var. *notatior,* the final critical habitat determination for this taxon will not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not adversely modify critical habitat under section 7. While non-Federal entities

that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects; however, none of the entities potentially affected are considered to be small governments. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Allium munzii* in a takings implications assessment. Because we are not designating critical habitat in this final rule for *Atriplex coronata* var. *notatior,* we did not include an analysis for this taxon in the takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that this designation of critical habitat for *A. munzii* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. We did not receive any comments from these agencies. Because we are not designating critical habitat in this final rule for *Atriplex coronata* var. *notatior,* the final critical habitat determination for this taxon will not impose any restrictions additional to those currently in place. The designation of critical habitat in areas currently occupied by *Allium munzii* is not expected to impose additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat for *A. munzii* may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. The final critical habitat designation for *Allium munzii* is defined by the map or maps, as modified by any accompanying regulatory text, and identifies the elements of physical or biological features essential to the conservation of *A. munzii* within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and

to make information available to tribes. We determined that there are no tribal lands within the geographical area occupied by *Allium munzii* or *Atriplex coronata* var. *notatior* at the time of listing that contain the physical or biological features essential to the conservation of the taxa, and no tribal lands outside the geographical area occupied by *A. munzii* and *A. c.* var. *notatior* at the time of listing that are essential for the conservation of the two taxa. Therefore, we are not designating critical habitat for *A. munzii* on tribal lands. No critical habitat is designated for *A. c.* var. *notatior* in this final rule.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Carlsbad Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407, 1531–1544, and 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entry for ''*Allium munzii*'' under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Allium munzii	Munz's onion	U.S.A. (CA)	Alliaceae	E	650	17.96 (a)	NA
*	*	*	*	*	*	*	*

■ 3. Amend § 17.96(a) as follows:
■ a. Under Family Liliaceae, remove the designation of critical habitat for ''*Allium munzii* (Munz's onion)''; and
■ b. Add Family Alliaceae and a designation of critical habitat for ''*Allium munzii* (Munz's onion)''.

The addition reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Alliaceae: *Allium munzii* (Munz's onion)

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Allium munzii* consist of two components:

(i) Clay soil series of sedimentary origin (for example, Altamont, Auld, Bosanko, Porterville), clay lenses (pockets of clay soils) of those series that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (for example, Cajalco, Las Posas, Vallecitos):

(A) Found on level or slightly sloping landscapes or terrace escarpments;

(B) Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level;

(C) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(D) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

(E) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub or occasionally in cismontane juniper woodlands; or

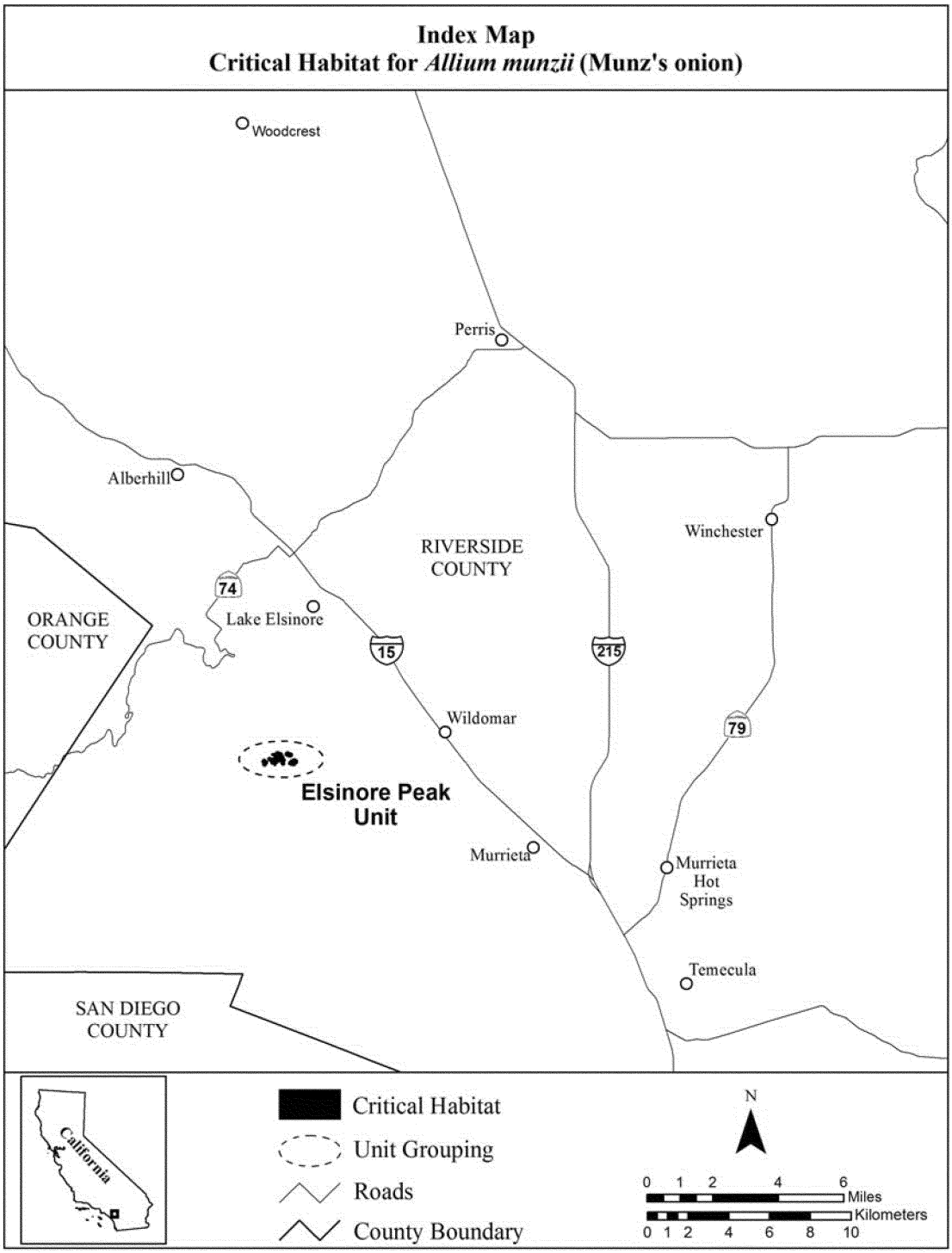
(ii) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and related infrastructure, and the land on which they are located existing within the legal boundaries on May 16, 2013.

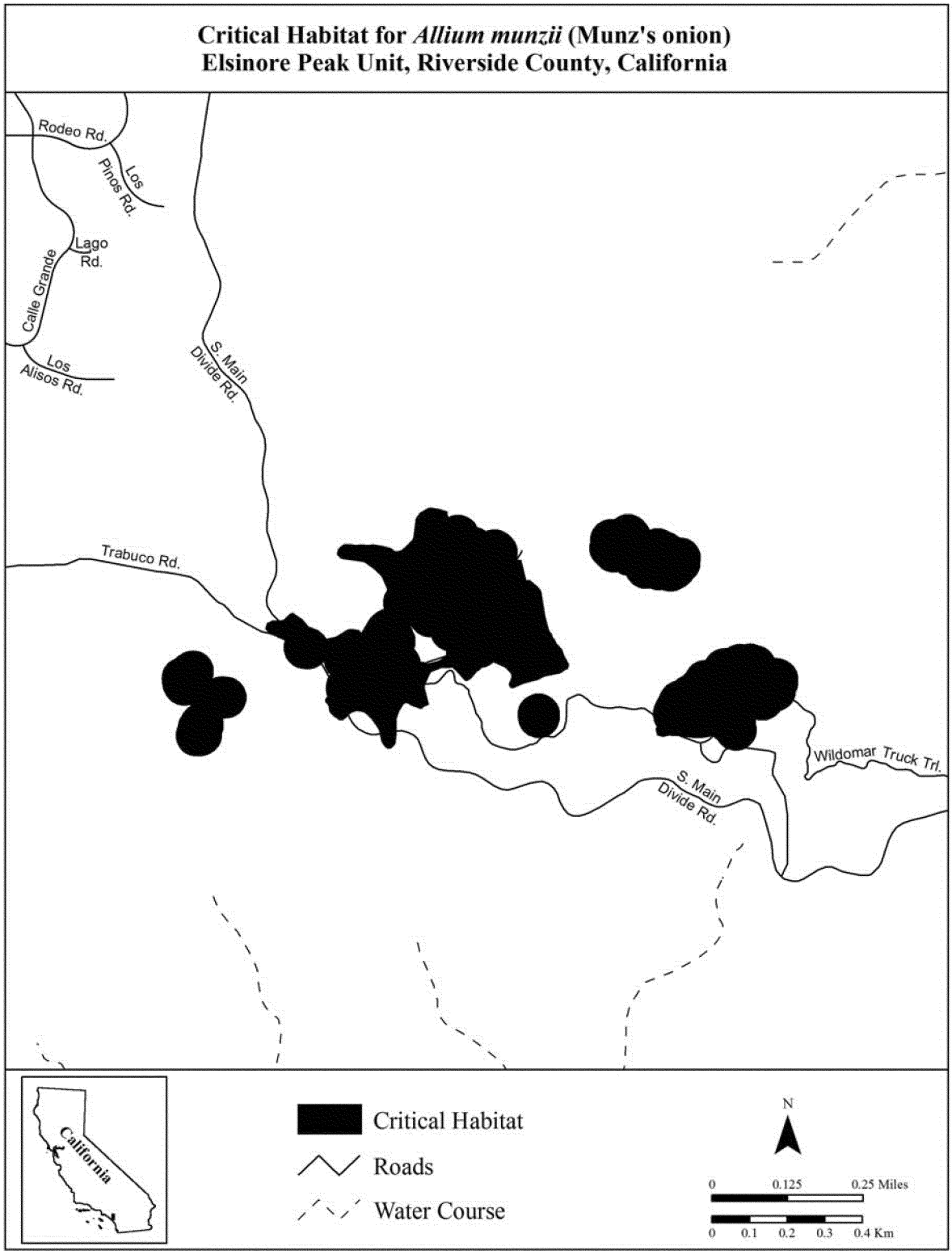
(4) *Critical habitat map units.* Data layers defining map units were created using a base of USDA digital orthophotos of Riverside County, California. Critical habitat units were then defined using Universal Transverse Mercator (UTM) Zone 11, North American Datum (NAD) 1983 coordinates.

(5) Index map follows:

BILLING CODE 4310–55–P



(6) Elsinore Peak Unit, Riverside County, California. Map of Elsinore Peak Unit, follows:



* * * * *

Dated: March 28, 2013.

Rachel Jacobsen,

Principal Deputy, Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–08364 Filed 4–15–13; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 78 Tuesday,
No. 73 April 16, 2013

Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, *et al.*

Department of State

22 CFR Parts 120, 121, and 123

Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform; Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform; Final Rules

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 748, 750, 756, 758, 762, 764, 770, 772, and 774

[Docket No. 120403246–2657–01]

RIN 0694–AF65

Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Export Control Reform (ECR) Initiative, the Bureau of Industry and Security (BIS), and the Directorate of Defense Trade Controls (DDTC), Department of State, have published multiple proposed amendments to the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), respectively, to strengthen national security by fundamentally reforming the export control system. This final rule implements the initial ECR changes by adding a structure and related provisions to control munitions items that the President has determined no longer warrant export control on the U.S. Munitions List (USML) on the Commerce Control List (CCL), specifically aircraft, gas turbine engines, and related items. This rule is being published in conjunction with a Department of State rule that revises the USML so that upon the effective date of both rules, the USML and CCL and corresponding regulatory structures will be complementary. The revisions in this final rule are also part of Commerce's retrospective regulatory review plan under EO 13563, which Commerce completed in August 2011.

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

ADDRESSES: Commerce's full plan can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

FOR FURTHER INFORMATION CONTACT: For general questions about the ''600 series'' control structure or transition related questions, contact Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or *rpd2@bis.doc.gov.* For technical questions about the ECCNs included in this rule contact Gene Christiansen, Office of National Security and Technology Transfer Controls, at 202–482–2984 or *gene.christiansen@bis.doc.gov.* For questions about the definition of ''specially designed,'' contact Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or *timothy.mooney@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: This final rule implements the initial ECR changes by adding a structure and related provisions to control munitions items that the President has determined no longer warrant export control on the U.S. Munitions List (USML) on the Commerce Control List (CCL). In addition to adding this control structure, this rule creates ten new ''600 series'' Export Control Classification Numbers (ECCNs) to control an initial tranche of items moving from the USML to the CCL: aircraft and gas turbine engines, related parts, components, accessories, attachments, software, and technology.

This rule also adopts as much as possible a common definition of ''specially designed'' for use under the EAR and the ITAR, along with other key terms used on the two control lists. In addition, this rule addresses implementation issues related to the transition of items from the USML to the CCL, including the continued use of DDTC-issued licenses that include items transferred to the CCL.

This rule implements changes that were proposed in five rules published between July 15, 2011 and June 21, 2012 under ECR. This rule is being published in conjunction with a Department of State rule that revises the USML so that upon the effective date of both rules, the USML and CCL and corresponding regulatory structures will be complementary.

Contents

I. The Export Control Reform Initiative

A. Background

The objective of the Export Control Reform (ECR) Initiative is to protect and

enhance U.S. national security interests. President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. In April 2010, then-Secretary of Defense Robert M. Gates, describing the initial results of that effort, explained that fundamental reform of the U.S. export control system is necessary to enhance national security. Once the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML) are amended so that they control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and the Export Administration Regulations (EAR) are amended to control military items that do not warrant USML controls, the U.S. export control system will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern.

On July 15, 2011, BIS published *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)* (76 FR 41958) (hereinafter ''July 15 (framework) rule''). That rule proposed a regulatory framework to control items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President determines no longer warrant export control under the AECA. These items would be controlled under the EAR once the congressional notification requirements of section 38(f) and corresponding amendments to the ITAR (22 CFR parts 120–130) and its USML and the EAR (15 CFR parts 730–774) and its Commerce Control List (CCL) are completed.

After the July 15 (framework) rule proposed this regulatory framework, BIS published subsequent rules proposing specific changes to the CCL, and to other parts of the EAR. Among other rules, on June 21, 2012, BIS published *Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review* (77 FR 37524) (hereinafter ''June 21 (transition) rule''). That rule proposed, *inter alia,* establishing a general order to facilitate the transition from ITAR to EAR licensing jurisdiction and broadening certain EAR license exceptions and licensing procedures to ensure they are not more restrictive than comparable ITAR exemptions and approvals.

This final rule implements ECR by finalizing the provisions contained in five proposed rules published between July 15, 2011 and June 21, 2012, which adds to the CCL military aircraft, military gas turbine engines, and related items that the President has determined no longer warrant export control on the USML. The Department of State made the congressional notification required by Section 38(f) of the AECA for removal of these items from the USML. The majority of the revisions in this rule are specific to the munitions items that are transferred from the USML to the CCL; however, many revisions also affect items or transactions that were already subject to the EAR prior to the effective date of this rule.

Rather than adding a new paragraph to § 734.3 for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), as proposed, BIS is adding a note to section 734.3(b)(1)(i) to clarify the delegations of authority between the Departments of State and Justice with respect to defense articles identified on the USML in the ITAR and the United States Munitions Import List (USMIL). BIS received no comments from the public on this issue. BIS does not believe that this change is substantive; rather it more accurately reflects the relationship between the USML in the ITAR and the United States Munitions Import List.

B. List of Proposed Rules

This rule implements amendments to the EAR proposed in the following five rules published between July 15, 2011 and June 21, 2012 under ECR:

- *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* (, 76 FR 41958, July 15, 2011) (RIN 0694–AF17) (''July 15 (framework) rule'');
- *Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* (76 FR 68675, November 7, 2011) (RIN 0694–AF36) (''November 7 (aircraft) rule'');
- *Revisions to the Export Administration Regulations (EAR): Control of Gas Turbine Engines and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* (76 FR 76072, December 6, 2011) (RIN 0694–AF41) (''December 6 (gas turbine engines) rule'');
- *''Specially Designed'' Definition,* (77 FR 36409, June 19, 2012) (RIN 0694–AF66) (''June 19 (specially designed) rule''); and
- *Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review,* (77 FR 37524, June 21, 2012) (RIN 0694–AF65) (''June 21 (transition) rule'').

C. Relationship to Other Rules Implementing ECR

This final rule is published concurrently with the Department of State final rule, *Revisions to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform.* BIS anticipates additional final rules will be published concurrently by both agencies moving additional munitions items from the USML to the CCL, once the notification process is completed in accordance with section 38(f) of the AECA and subsequent USML categories and the corresponding Export Control Classification Numbers (ECCNs) are published in final form.

II. Addition of the ''600 Series'' to the CCL

In the July 15 (framework) rule, BIS proposed to add a new ''xY6zz'' control series to the CCL. This series, known as the ''600 series,'' would control most items formerly on the USML that move to the CCL and would consolidate the thirteen existing Wassenaar Arrangement Munitions List (WAML) entries (i.e., those entries currently under ''xY018''). In implementing the ''600 series'' in this rule, as discussed below, BIS took into account comments related to the function and structure of the ''600 series'' submitted under all prior proposed rules issued as part of ECR that would move items from the USML to the CCL. These rules are:

- *Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines No Longer Warrant Control on the United States Munitions List,* (76 FR 76085, December 6, 2011);
- *Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the*

United States Munitions List (USML), (76 FR 80282, December 23, 2011);

- *Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No longer Warrant Control Under the United States Munitions List (USML)* (76 FR 80291, December 23, 2011);
- *Revisions to the Export Administration Regulations (EAR): Control of Energetic Materials and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (77 FR 25932, May 2, 2012);
- *Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List* (77 FR 29564, May 18, 2012);
- *Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (77 FR 33688, June 7, 2012); and
- *Revisions to the Export Administration Regulations (EAR): Control of Military Training Equipment and Related Items the President Determines No Longer Warrants Control Under the United States Munitions List (USML)* (77 FR 35310, June 13, 2012).

These rules, as well as the rules referenced in Section I.B., above, published in 2011 and 2012, provided the public with extensive notice regarding the proposed control structure and transition-related provisions and offered a wide array of examples of proposed ''600 series'' items. The public comments BIS received in response to these proposed rules have played an important role in helping the Administration refine the provisions that are included in this final rule and the corresponding Department of State final rule to achieve initial implementation of ECR. A summary of the comments and BIS' responses are provided below.

A. General Structure

Under the July 15 (framework) rule, BIS proposed to add the new ''600 series'' to each applicable CCL category so that it would fall after the 300 series (ECCNs that control items primarily for chemical and biological weapon proliferation reasons) and before the 900 series (ECCNs that control items for various U.S. foreign policy reasons). The ''600 series'' framework would allow for identification, classification, and control of items transferred from the USML that, based on their technical or other characteristics, are not classified under an existing ECCN that is subject to controls for any reason other than Anti-Terrorism (AT) reasons. This structure would allow for a straightforward application of a licensing policy for items that move to the CCL from the USML. The fourth and fifth characters of each new ''600 series'' ECCN would generally track the WAML categories for the types of items at issue.

BIS is adopting the general structure of the ''600 series'' proposed under the July 15 (framework) rule. Most commenters were supportive of this structure, but some commenters were concerned that it did not make the CCL more ''positive'' and that dual-use items may be controlled under a ''600 series'' ECCN. BIS shares the goal of creating a more positive control list, but maintained a goal that no items be unintentionally decontrolled during the process of moving items from the USML to the CCL. Since the USML contains, *inter alia,* catch-all controls on parts, components, accessories, and attachments specifically designed or modified for defense articles, most of these catch-all controls are being moved to the CCL. BIS will continue to work to make the CCL more positive through the multilateral regimes and through considering public comments responding to the advance notice of proposed rulemaking, *Feasibility of Enumerating ''Specially Designed'' Components,* (77 FR 36419, June 19, 2012). Also, BIS does not believe that dual-use items or purely civil items—i.e., items that are now subject to the EAR and not subject to the jurisdiction of the ITAR—would be moved to a ''600 series'' entry because items in a -018 ECCN are on the WAML and thus, even prior to this rule, are more properly described as munitions items than dual-use or purely civil items.

B. Reasons for Control

In proposing the ''600 series,'' the July 15 (framework) rule also proposed the reasons for control for ''600 series'' ECCNs. Generally, such ECCNs would be subject to National Security Column 1 (''NS1''), Regional Stability Column 1 (''RS1''), Anti-Terrorism Column 1 (''AT1''), and United Nations Embargo (''UN'') reasons for control. In addition, end items moving from the USML that are controlled by the Missile Technology Control Regime, Australia Group, and Firearms Convention would be controlled for Missile Technology Column 1 (''MT1''), Chemical and Biological Weapons Proliferation Column 1 (''CB1''), and Firearms Convention (''FC'') reasons, respectively, under the EAR. Items that were on the CCL prior to the creation of the ''600 series'' and that move into the ''600 series'' would retain the reasons for control to which those items were subject prior to the creation of the ''600 series.''

BIS is adopting the reasons for control described above in this final rule. Some commenters were concerned that the ''600 series'' ECCNs contained too many varying controls, unilateral NS controls, overly sensitive NS1 and RS1 controls, or could inaccurately contain MT controls. BIS does not agree with these comments. Almost all items moving from the USML to the ''600 series'' are also on the WAML, particularly considering the catch-all controls in the WAML. Thus, there is already multilateral agreement on such items and NS controls are warranted. To the extent an item in the ''600 series'' is not on the WAML, BIS has concluded that its inherent or unique military or intelligence applicability warrants RS1 controls, unless the item is specifically listed in a .y paragraph within the ECCN (see discussion below in Section II.C for an explanation of .y paragraphs). BIS has also determined that certain license exceptions should be available under certain circumstances and under specific conditions in order to better harmonize the EAR's exceptions with the exemptions in the ITAR or to otherwise implement the national security objectives of the reform effort as set forth above. With respect to MT controls, the Departments of Defense, State, and Commerce have reviewed the USML to determine which items are currently subject to MT controls. As mentioned, BIS will continue to review the CCL to make the entries more clear and positive, including reviewing the scope of controls on items subject to the EAR.

The United Nations (UN) reason for control was added to the ''600 series'' ECCNs after publication of the rule *Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations* (77 FR 42973, July 23, 2012) established this convention for identifying items controlled to UN arms-embargoed destinations.

C. Items Paragraph

Within each ''600 series'' ECCN, the July 15 (framework) rule proposed that specific ''end items,'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' moving from the USML would, unless otherwise noted, be

positively enumerated in paragraphs .a through .w. Former USML ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are not (i) enumerated in the revised, positive USML or (ii) enumerated in a new ''600 series'' entry in paragraphs .a through .w would be controlled in the .x paragraph of each new corresponding ''600 series'' ECCN as ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for items controlled elsewhere in that ECCN or for defense articles controlled in the corresponding USML category.

The .y paragraph of each ''600 series'' would control specific types of ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that, even if ''specially designed'' for a defense article or ''600 series'' end item, warrant no more than AT-only controls. Thus, one would not need to review the .x paragraph if a ''part,'' ''component,'' ''accessory,'' or ''attachment'' is described in the .y paragraph. The .y paragraphs thus do not control the enumerated items if they were not ''specially designed'' for a ''600 series'' item or a defense article subject to the ITAR.

BIS received multiple comments regarding the structure of the .x and .y paragraphs. With respect to the .x paragraph, some commenters recommended that the descriptions of items should be more positive and avoid the use of ''specially designed,'' while other commenters believed that items in .x should only be subject to embargoes, end-use controls, and end-user controls. Again, BIS shares the goal of ultimately having a more positive list of items controlled in the ''600 series'' and the CCL generally. However, the proposed revisions must comply with multilateral regime obligations and must not inadvertently decontrol items that are being moved from the USML. Moreover, it would be physically impossible and impractical to enumerate every U.S. and foreign-origin ''part,'' ''component,'' ''accessory,'' and ''attachment'' that is or ever was ''specially designed'' for every U.S. and foreign-origin military item. Therefore, BIS is maintaining the use of ''specially designed'' when describing items in the .x paragraph. Further, while items in the .x paragraph are of less significance than the controls of the ITAR warrant, they nevertheless warrant control beyond the requirements of parts 744 and 746 due to their inherent military or intelligence characteristics.

With respect to the .y paragraph, commenters expressed support for positively enumerating items in the .y paragraph and applying an AT control only. However, some commenters believed that .y items should be designated EAR99, that BIS should develop a list of items that would be controlled for AT reasons only across all ''600 series'' ECCNs, or that .y items should be controlled under an existing ECCN subject to AT control rather than a ''600 series'' ECCN.

BIS does not accept these recommendations. All items described in the .y series have been subject to the ITAR in that they, by definition, were ''parts,'' ''components,'' ''accessories,'' or ''attachments'' specifically designed or modified for a defense article. If such items were identified as not being ITAR controlled in a commodity jurisdiction (CJ) determination or were not otherwise specifically designed or modified for a defense article, then they were not ITAR-controlled and are not now becoming subject to a .y control. To avoid designating such items as EAR99, BIS developed the .y list structure and is implementing the .y list structure in this final rule to reflect the lesser military significance of such items. Also, as one commenter alluded to, the definition of ''specially designed'' already provides a list of ''parts'' in paragraph (b)(2) of the definition that are militarily less significant across all categories. The .y list is necessary for individual ''600 series'' entries because a ''part'' ''specially designed'' for one end item or end use may not be considered critical, but similar ''parts'' may be critical for a different end item or end use. For example, ''hoses'' for military vehicles may warrant a .y listing in the ''600 series'' controls for military vehicles but not all ''hoses'' specially designed for military aircraft are *per se* insignificant. Moreover, BIS believes that the inherent military nature of .y items necessitates inclusion in a ''600 series'' ECCN rather than an existing ECCN with an AT reason for control. Because different classification and marking schemes will already be necessary for such items since they are currently subject to the ITAR, there would be little benefit to exporters of using an existing ECCN vis-à-vis a .y entry in a ''600 series'' ECCN because both are subject to the same reason for control and the same reporting requirements in the Automated Export System (AES). As described below, part 758 is being amended to address issues pertaining to the reporting of ''600 series'' items in AES.

This rule does not adopt the proposal to create .y.99 paragraphs that was first proposed in the November 7 (aircraft) rule. One commenter raised concerns about moving items to the .y.99 paragraph if the items were determined to be subject to the EAR under a prior CJ determination and are not on the CCL. BIS agrees that the burden of tracking down and analyzing whether items formally determined not to be subject to the ITAR were also EAR99 items because they were not identified on the CCL outweighs the once-contemplated organizational benefits of creating the .y.99 control. Such items have already gone through an interagency review process that concluded whether the items were subject to the ITAR. Thus, BIS has determined that any such items should retain EAR99 status if not otherwise identified on the CCL. Paragraph (b)(1) of the new definition of ''specially designed'' also reflects this understanding. An amendment to General Order No. 5 from what was proposed in the June 21 (transition) rule, as discussed further below in Section III.C, also addresses this issue.

III. Transition

A. Delayed Effective Date

This rule adopts a delayed effective date of 180 days after publication in the **Federal Register**. The public comments addressing the effective date for this final rule varied. Some commenters requested a 120-day delay before the effective date while other commenters requested a longer delay, ranging from 180 days to four years. They cited many tasks to be performed as a result of this transition, including classifying and marking items transferred to the CCL, obtaining new licenses, changing internal databases, modifying compliance practices, and training personnel. BIS and the Directorate of Defense Trade Controls (DDTC), Department of State have taken various steps to ease the transition from the USML to the CCL. This final rule includes specific provisions to ease the transition process, such as the new General Order No. 5 in Supplement No. 1 to part 736 being added to the EAR in this final rule and the provisions to address the dual-licensing issue, that are discussed below in Sections III.B and III.C.

These provisions, along with the other changes included in this final rule, are intended to ease the transition for exporters, reexporters and transferors from the USML to the CCL and alleviate some of the public concerns regarding the effective date of the rule. BIS agrees that a reasonable period of transition, including a delayed effective date for this final rule, should be provided. Therefore, this final rule has a delayed effective date of 180 days. This approximately six-month period will provide the regulated community a reasonable amount of time to implement

changes to conform their export control compliance systems to the new ''600 series'' and the first ten ECCNs that are being added to the EAR in this final rule. A longer delay, such as four years, as recommended by one commenter, would not have been reasonable given the national security objectives of the reform effort set out above. A 180-day delayed effective date represents BIS's best effort to provide sufficient time for exporters, reexporters and transferors to update their internal systems and for BIS to provide education and outreach services to those affected who may not have been following closely the changes BIS has proposed over the course of the last two years.

B. Amendment to the EAR To Address Dual Licensing

In response to the June 21 (transition) rule, many commenters expressed concerns that the movement of items from the USML to the CCL would result in the need to obtain a license from DDTC and a license from BIS for many transactions that currently only require one license from one agency. For example, exports of end items on the USML often contain related USML parts and components in the shipment, so such items are typically authorized under a single DDTC license, such as a DSP–5. Since many parts and components are moving from the USML to the CCL, this typical export scenario could require two separate authorizations from two agencies. Further, one commenter to the June 21 (transition) rule stated that it is industry practice to include items currently subject to the EAR in a single license application to DDTC or under the Foreign Military Sales (FMS) program because such items will accompany USML items in a shipment authorized under a license or because such EAR items are included in an executed Letter of Offer and Acceptance (LOA) under the FMS program.

To address these issues, BIS is amending part 734 to reflect the fact that the President has delegated to the Secretary of State the authority to license or otherwise authorize the export, reexport or in-country transfer of items otherwise subject to the EAR, as agreed upon by the Secretaries of State and Commerce. (Executive Order 13637 of March 8, 2013, Administration of Reformed Export Controls, 78 FR 16129, March 13, 2013). The items will remain subject to the EAR, and BIS will continue to maintain jurisdiction for licensing and enforcement. However, applicants will be able to choose whether to use a DDTC or BIS authorization so long as the export, reexport, or in-country transfer meets the applicable requirements described herein.

In accordance with new § 120.5(b) of the ITAR, § 734.3(e) authorizes the export, reexport or in-country transfer of items subject to the EAR when the items subject to the EAR will be used in or with items subject to the ITAR and are included on the same DDTC license, agreement, or other approval. Thus, a DDTC license, agreement, or other approval made in accordance with § 120.5(b) of the ITAR will preclude the need for a separate license from BIS, and a BIS license will only be required when an export, reexport, or in-country transfer exceeds the scope of the DDTC license, agreement, or other approval or exceeds the scope of § 120.5(b) of the ITAR. DDTC added § 120.5(b) to the ITAR on April 16, 2013.)

Under this provision, DDTC has discretion in determining whether the requirements of § 120.5 have been met and whether items subject to the EAR should be authorized under a license, agreement, or other approval by DDTC. To provide guidance on the use of § 120.5(b) of the ITAR, items subject to the EAR may be exported, reexported, or transferred (in-country) using a valid DDTC license, agreement, or other approval. The following are illustrative scenarios for when such approvals may be used:

- Parts and components subject to the EAR that will be used in or with end items subject to the ITAR and that would otherwise require a license from BIS may all be exported under a DDTC license, such as a DSP–5, or reexported under a DDTC General Correspondence (GC) approval.
- Software subject to the EAR that will be used in or with software or an end item subject to the ITAR and that would otherwise require a license from BIS may all be exported under a DDTC license, such as a DSP–5, or reexported under a GC.
- Technology subject to the EAR that is used with technical data subject to the ITAR that will be used under the terms of a Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA) and that would otherwise require a license from BIS may all be exported under the TAA or MLA.
- If a program authorized by a TAA or MLA requires that parts and components subject to the EAR *and* parts and components subject to the ITAR be shipped in furtherance of the TAA or MLA, then DSP–5 licenses may be used. However, if the program only requires that parts and components subject to the EAR be shipped in furtherance of the TAA or MLA, then authorization must be obtained from BIS and DSP–5 licenses may not be used.

One commenter also believed that another scenario would require additional licensing—the export and subsequent installation of a ''600 series'' part or component into a foreign defense article. Under this situation, a license may be required from BIS to export the ''600 series'' parts or components and then a TAA may be required from DDTC to perform the defense service in order to provide the installation and integration services with respect to a defense article. However, this scenario differs from those above because two authorizations would already be required under the ITAR. For instance, if the part or component to be exported is currently on the USML, then the applicant would need to apply for a TAA for the exchange of technical data pursuant to providing the installation and integration service regarding a defense article, while also applying for a separate DSP–5 license for the export of the part or component. If the part or component is currently subject to the EAR or would become subject to the EAR as a ''600 series'' item, then a TAA would still be required from DDTC and a license or other authorization would be required from BIS for the export of the part or component. Since the number of authorizations would remain the same, this scenario would not be eligible for the provision described above.

Section 734.3(e) authorizes the export, reexport or in-country transfer of items subject to the EAR when those items are subject to licenses, agreements, or other approvals issued by DDTC to authorize items subject to the EAR that will be exported, reexported, or transferred (in-country) under the FMS program. Items subject to the EAR that are included in an executed Letter of Offer and Acceptance under the FMS program may be identified in a DSP–94 submitted in accordance with § 126.6(c) of the ITAR. The DSP–94 and use of § 126.6(c) will serve as authorization for items subject to the EAR, and no separate authorization from BIS will be required. However, any export, reexport, or in-country transfer of an item subject to the EAR that is outside the scope of the LOA or DSP–94 must adhere to the requirements of the FMS case. In addition, no separate authorization from BIS is required to supplement actions taken on FMS cases by the Department of State's Office of Regional Security and Arms Transfers (RSAT). Questions regarding §§ 120.5(b) or 126.6(c) of the ITAR; the use of any DDTC license, agreement, or other approval; or FMS

cases should be directed to DDTC or RSAT, as appropriate.

C. Transition Period and General Order No. 5

In the June 21 (transition) rule, BIS proposed creating General Order No. 5 in Supplement No. 1 to part 736 to describe the transition process for items moving from the USML to the CCL upon the publication of the pertinent final rules. The proposed general order described the grandfathering of DDTC licenses and agreements, the use of BIS authorizations, and the submission of disclosures to BIS and DDTC related to the transition of items from the USML to the CCL. In response to the proposed general order, BIS received public comments regarding: the timing for submitting a license application to BIS, clarification of when to submit a disclosure to BIS and when to submit a disclosure to DDTC, a recommendation to include some form of a ''safe harbor'' for violations when a DDTC approval is used for items subject to the EAR, and guidance on shipping documentation.

1. Timeline for Applications, Amendments, and Grandfathering

Because BIS and DDTC are adopting a six-month delay in the implementation of this final rule, BIS has made corresponding amendments to General Order No. 5 regarding the earliest date that BIS will accept license applications for items moving from the USML to the CCL under this final rule and under future final rules. For those wishing to export under the authority of the EAR as soon as possible for items moving from the USML to the CCL, applicants may submit license applications immediately after the publication of the final rule adding such items to the CCL. Thus, applicants may, in effect, pre-position license applications early to facilitate processing of the license application. Such a pre-positioned license application will be processed in accordance with § 750.4 of the EAR, but if BIS completes processing the application prior to the effective date of the applicable final rule, BIS will hold the application without action (HWA), until the effective date of that final rule. Applications for transitioned items received after the effective date of the applicable final rule will be processed as described in § 750.4 of the EAR.

Existing holders of DDTC licenses, agreements, or other approvals, may maintain existing authorizations or obtain new authorizations for items moving from the USML to the CCL in accordance with DDTC's transition plan. Proposed General Order No. 5 has been amended to more closely correspond to DDTC's finalized transition plan. Questions regarding the continued use of DDTC licenses, agreements, or other approvals should be directed to DDTC.

2. Submission of Voluntary Self-Disclosures

BIS is amending the prior guidance in proposed General Order No. 5 with respect to submitting disclosures to BIS or DDTC. The amendment makes clear the existing recommended practice will continue to apply. For potential violations of the EAR, persons are recommended to submit a voluntary self-disclosure to BIS; for potential violations of the ITAR, persons are recommended to submit a voluntary disclosure to DDTC; and for potential violations of both the EAR and ITAR, persons are recommended to submit disclosures to both agencies. One commenter suggested inserting a ''safe harbor'' provision for those who use a DDTC authorization for items subject to the EAR. BIS believes that the addition of § 734.3(e) addresses that commenter's concerns, because it removes the dual licensing requirement that gave rise to those concerns (see Section III.B., above). Also, if a person uses a DDTC authorization for an item subject to the EAR that does not fall within the circumstances described in § 734.3(e), BIS will exercise discretion in reviewing and responding to those who filed disclosures involving such scenarios.

3. Miscellaneous Issues

Because of the six-month implementation period for this final rule, BIS believes that the public will have adequate time to adjust USML and CCL notations for shipping documents. BIS, therefore, is not adding provisions related to export clearance in General Order No. 5. BIS is, however, amending the proposed General Order No. 5 to add a paragraph (c) to address the removal of the proposed .y.99 paragraph for ''600 series'' ECCNs by clarifying that if the U.S. Department of State has previously determined that an item is not subject to the ITAR and the item is not listed on the CCL, then the item will remain designated as EAR99.

IV. Retrospective Regulatory Review

On January 18, 2011, President Barack Obama issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. Although ECR did not originate with Executive Order 13563, it is consistent in spirit and substance. On August 5, 2011, BIS issued a notice soliciting public comment on streamlining its regulations pursuant to that executive order (76 FR 47527). In response to public comments received on the August 5, 2011 notice, and consistent with BIS's internal analysis, the June 21 (transition) rule proposed revisions to license exceptions for government uses (GOV, § 740.11) and temporary exports (TMP, § 740.9) that streamlined and updated unduly complex or outmoded provisions. At the same time, BIS broadened certain provisions within these license exceptions to implement ECR. One commenter to the June 21 (transition) rule stated that it appreciated BIS's efforts to streamline this regulatory text.

BIS intends to address other proposed changes to the EAR in accordance with the executive order in separate **Federal Register** notices. BIS received a number of comments, particularly on license exceptions in response to the June 21 (transition) rule, that require extensive consideration, possibly including additional proposals seeking public comment. BIS intends to address these comments in future rules as part of BIS's continuing retrospective review of the EAR.

Commerce's full retrospective regulatory review plan under Executive Order 13563 can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

V. Part 730—General Information

This rule revises the heading of § 730.3 from ''Dual use exports'' to ''''Dual use'' and other types of items subject to the EAR'' to reflect the scope of items subject to export controls under the EAR. Similarly, the revised text notes that while the term ''dual use'' is often used to describe the types of items subject to the EAR, more precisely, any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to § 734.3(b), is subject to the EAR.

One commenter recommended deletion of part 730, because it is not regulatory, but guidance. BIS has not adopted this recommendation, because it was outside the scope of this rule. The part exists for the benefit of those new to exporting.

VI. Part 732—Steps for Using the EAR

BIS is amending §§ 732.2 (Steps regarding scope of the EAR) and 732.3 (Steps regarding the ten general prohibitions) to remove text that is redundant to that found in § 736.2(b)(3)—General Prohibition Three. BIS received one comment in

response to the July 15 (framework) rule's part 732 proposal. The commenter recommended deletion of parts 730 and 732, because the commenter believes those provisions are guidance and not regulatory in nature. For reasons described in discussion to part 730 above, BIS has decided to keep parts 730 and 732 for the benefit of those new to exporting. However, BIS agreed with the recommendation to add a disclaimer to part 732 stating that part 732 should only be used as a general overview of the EAR. This disclaimer is in new § 732.1(a)(3). BIS also agreed that repeating regulatory text concerning General Prohibition Three in §§ 732.2 and 732.3 is not useful; therefore, the repeated text is deleted and replaced by a brief explanation of the direct product rule (General Prohibition Three) and a reference to § 736.2(b)(3) is added to § 732.2(f). Although the June 21 (transition) rule proposed revisions to the direct product rule, it did not propose corresponding revisions to the steps. This final rule makes that conforming change.

The order of review in § 732.3(b) (Step 7: Classification) is revised to add a reference to Supplement No. 4 to part 774—Commerce Control List Order of Review. The July 15 (framework) rule proposed to add a cross reference in Step 22 (Terms and Conditions of the License Exceptions), § 732.4(b)(3)(iv). The reference alerts exporters that, if they are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the ''600 series,'' they should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports. This rule implements that proposal.

The July 15 (framework) rule also proposed to revise Step 26 (license applications) to add a paragraph describing the process of requesting License Exception STA eligibility for export, reexport or in-country transfer of an aircraft controlled under ECCN 9A610.a. While the July 15 (framework) rule proposed eligibility requests for ''end items'' generally, ships, vehicles, and aircraft were the ''end items'' items identified in subsequent technical reviews as requiring a determination of eligibility for License Exception STA, and of those, only aircraft are included in this final rule. A reference is also added to Step 26 to Supplement No. 2 to part 748, paragraph (w) (License Exception STA eligibility requests), which contains instructions for how to request in an application that subsequent exports of such end items be eligible for License Exception STA. The revisions to Step 26 also indicate that exporters, reexporters and transferors may review the list of such end items that have already been approved for License Exception STA pursuant to § 740.20(g) in the License Exceptions paragraph of ECCN 9A610. Lastly, to alert exporters, reexporters, and transferors who wish to use License Exception STA in such cases in which License Exception STA has been approved, a new Note was proposed to § 734.4(b)(7)(ii) to remind them to review paragraphs (a) and (b) to determine the steps needed in using license exceptions. BIS did not receive any comments regarding these specific proposals.

VII. Supplement No. 3 to Part 732—Red Flags

This rule expands the EAR's ''Know Your Customer'' Guidance and Red Flags to provide compliance guidance for License Exception STA and the ''600 series.''

The July 15 (framework) rule proposed creating two new red flags, designated as numbers 13 and 14 in Supplement No. 3 to part 732, that would be specific to ''600 series'' items in addition to the existing 12 red flags in that supplement that apply to EAR transactions generally.

One such proposed red flag (number 13) would address a proposed transaction involving ''parts'' of ''600 series'' items where the country of destination has no apparent need for the ''parts'' or for the quantity ordered. One commenter stated this proposed red flag overlaps with two existing red flags that address item suitability and quantity for transactions subject to the EAR. This commenter proposed generalizing the proposed new red flag to make it applicable to all transactions subject to the EAR, not just ''600 series'' items. Another commenter recommended that the phrase ''You receive an order'' in this red flag be changed to read ''An order received'' and that the term ''components'' be added to the red flag to make the red flag consistent with other red flags. Finally, one commenter recommended that this red flag not apply to .y items because such application would place an unreasonable requirement on the exporter.

The second proposed red flag would address a proposed transaction in which the customer indicates that the ''600 series'' items are destined for an arms embargoed country. One commenter suggested that this red flag be expanded to include customer indications of shipment to destinations or end users that would be prohibited or restricted for transactions involving all items subject to the EAR with a specific reference to ''600 series'' items and arms embargoed destinations.

One commenter recommended that both proposed red flags not be adopted because they would not be applicable to any of the items proposed for the ''600 series'' in the July 15 (framework) rule.

This final rule makes one change to the new proposed red flags in response to these comments. It adds the term ''components'' to red flag number 13 because BIS believes the additional term more completely describes the transactions that this red flag is intended to address, although the listing of ''parts'' and ''components'' is not intended to be an exhaustive listing of items that may fall within the scope of this red flag because other ''600 series'' items, such as ''accessories'' and ''attachments'' could also be used in this scenario. This final rule also makes a non-substantive clarification, by changing references from ''item'' to ''end item'' to create greater consistency with how the term ''end item'' is being used in the context of this new red flag 13. Lastly, to conform to the changes being made in this final rule, BIS is replacing the reference to arms embargoed countries in new red flag 14, with a reference to destinations listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR), which as described below, is a new country group being added to the EAR in this final rule.

BIS did not adopt any of the other recommendations concerning the red flags for the following reasons. Generalizing red flags 13 and 14 to apply to the entire EAR would dilute their effect in highlighting the military nature of the ''600 series'' items and the precautions appropriate for such items, including the various provisions being added to the EAR in this final rule to implement an appropriate control structure under the EAR for these munitions items. Adopting the phrase ''An order received,'' would be only a minor stylistic change from the proposed text that does not provide additional clarity. Excluding .y items from red flag 13 would be inappropriate because, even though the .y items require a license to fewer destinations than ''600 series'' items generally, they are ''specially designed'' ''parts'' and ''components'' for military items and, as such, deserve inclusion.

Several commenters in response to the July 15 (framework) rule also noted that exporters who will be new to the EAR because their items were previously only subject to the ITAR would benefit by having outreach

materials developed specifically for them to assist them in understanding the EAR and the new ''600 series.'' Red flags in this supplement, including the new red flags 13 and 14 being added in this final rule, are and will be an important part of BIS's outreach program. The BIS outreach program focuses on assisting persons involved in transactions that are subject to the EAR in understanding their responsibilities and what steps they can take to avoid being involved in transactions that may violate the EAR. BIS believes the two new red flags described above will assist those persons involved in transactions that are subject to the EAR involving ''600 series'' items, in particular those exporters, reexporters and transferors who will be new to the EAR.

VIII. Part 734—Scope of the EAR

A. Dual Licensing

As described above under section III.B., BIS is amending part 734 to note the authority of DDTC to authorize certain exports of items subject to the EAR to address public comments regarding dual licensing concerns.

B. De Minimis

Section 734.4 of the EAR sets forth the *de minimis* provisions, which provide that foreign-made items incorporating less than *de minimis* levels of U.S. content are not subject to the EAR. The July 15 (framework) rule proposed to add special restrictions for *de minimis* applicability for ''600 series'' items. That rule proposed amending § 734.4 (*De minimis* U.S. content) by adding paragraph (b)(3) and making a conforming change to paragraph (c). The rule proposed restricting the scope of *de minimis* for ''600 series'' ''parts,'' ''components,'' and other items subject to the EAR (i.e., those classified under xB6zz, xC6zz, xD6zz and xE6zz entries). The rule also proposed that when foreign-made items that incorporate such controlled U.S.-origin ''600 series'' items are to be exported from abroad or reexported to any country they are subject to the 10% *de minimis* rule for U.S.-origin content rather than the 25% *de minimis* rule.

Fourteen commenters found the July 15 (framework) rule proposal regarding a revised *de minimis* rule for ''600 series'' items too complex and unworkable. Commenters stated that having a 10% *de minimis* rule for ''600 series'' items and a 25% *de minimis* rule for all other items subject to the EAR would be extremely burdensome, if not impossible, for the commenters to calculate.

The June 21 (transition) rule proposal addressed the calculation concerns of the commenters to the July 15 (framework) rule by proposing to maintain the EAR's 25 percent *de minimis* rule for reexports to most countries; and would carry forward the ITAR's zero percent *de minimis* rule with respect to reexports of foreign-made items containing ''600 series'' content to countries subject to U.S. arms embargoes (Country Group D:5 of Supplement No. 1 to part 740 of the EAR).

BIS received eight comments to the June 21 (transition) rule. Four commenters agreed with this approach. Four commenters disagreed with this approach, generally suggesting that the arms embargoed countries be subject to the same 10% *de minimis* threshold that applies to countries in Country Group E:1. These commenters provided two reasons. First, they stated that foreign manufacturers determine *de minimis* at development stage and use the lowest possible threshold. The possibility of a 0% threshold may lead to designing out EAR content. Second, these commenters stated that three *de minimis* thresholds would make determining whether an item produced outside the United States is subject to the EAR unduly complex. BIS does not accept the recommendations to replace the 0% with a 10% U.S. content for foreign-made items containing ''600 series'' items destined to U.S. arms embargoed destinations (Country Group D:5 of Supplement No. 1 to part 740). BIS also does not agree with the comments that the approach would be unduly complex. All legal trade in defense articles is now with countries that are not subject to U.S. arms or other embargoes, and all such defense articles are subject to a 0% *de minimis* rule for all such destinations. Thus, for example, a foreign party's transfer of a foreign-made end item containing even one U.S.-origin ITAR-controlled component of any value from one NATO member to another NATO member requires State Department authorization. This naturally creates dis-incentives to purchase U.S.-origin content even for end items to be sold to allies of the United States. This rule changes this current 0% *de minimis* rule of the ITAR for all such items to the standard 25% *de minimis* rule of the EAR for all such items. Contrary to the comments, this change is a dramatic reduction in complexity and will significantly reduce the current incentives for buyers in such countries to avoid purchasing what were ITAR-controlled parts and components and what will, with this rule and successive implementations of additional categories, become ''600 series'' items subject to the EAR. It will at the same time maintain the status quo with respect to the 0% *de minimis* rule for trade in items with countries subject to U.S. arms embargoes. This is a simple rule—trade in foreign-made items with non-arms embargoed countries containing U.S.-origin military items is subject to the same rule as all other items subject to the EAR and trade in such items with countries subject to arms embargoes is prohibited, as is the case today. This furthers the twin U.S. policy objectives of removing unnecessary barriers in trade with most of the world and discouraging or indeed prohibiting trade in military items containing controlled U.S.-origin content with arms embargoed destinations.

One commenter asked that BIS clarify the *de minimis* provisions of the EAR by rewriting Supplement No. 2 to part 734 and by eliminating the one-time reporting requirement that applies to technology. BIS is not addressing this comment because it is outside the scope of any of the proposed rules being addressed by this final rule. Two commenters pointed out that § 123.9 of the ITAR contains an exemption for U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia, Japan, New Zealand, South Korea and Israel without prior written approval from DDTC. License Exception GOV is equivalent to this ITAR exemption, and other license exceptions in part 740 may also be available, *e.g.,* License Exception STA, for such transactions. One comment suggested BIS clarify the method of calculating the *de minimis* value by rewriting Supplement No. 2 to part 734 of the EAR; this recommendation falls outside the scope of this final rule.

In sum, this rule furthers U.S. national security and foreign policy interests by prohibiting the reexport of foreign-made items containing ''600 series'' content to countries subject to U.S. arms embargoes (Country Group D:5 in Supplement No. 1 to part 740), while removing the incentive the ITAR creates for foreign buyers to avoid such U.S.-origin content with respect to trade by and between other countries.

IX. Part 736—General Prohibitions

A. Foreign-Produced Direct Product

Prior to the effective date of this rule, certain foreign-produced direct products of U.S. technology were subject to the EAR: national security controlled items that were direct products of U.S.

national security-controlled technology, or of a plant that is the direct product of national security-controlled technology, when those products were destined to countries of concern for national security reasons (Country Group D:1) or terrorist-supporting countries (Country Group E:1). The June 21 (transition) rule proposed to expand these provisions by adding an additional country and product scope. Foreign-produced direct products of U.S.-origin ''600 series'' technology, or of a plant or major component of a plant that is a direct product of U.S.-origin ''600 series'' technology, that are ''600 series'' items are now subject to the EAR when reexported or exported from abroad to countries listed in Country Groups D:1 (national security countries of concern), D:3 (chemical and biological countries of concern), D:4 (missile technology countries of concern), D:5 (U.S. arms embargo countries) or E:1 (countries that support terrorism) in Supplement No. 1 to part 740. Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin.

BIS received three comments opposing the expanded country scope ''to include countries of concern due to nuclear proliferation or missile technology reasons'' for ''600 series'' items on the grounds that ''600 series'' items are controlled for national security and regional stability reasons. BIS is not making the suggested changes and is adopting the expansion of the country scope to countries of concern for missile or chemical and biological weapon proliferation reasons, because some ''600 series'' items are or likely will be only controlled for missile technology or chemical and biological reasons. BIS does not anticipate that any ''600 series'' items will be controlled for nuclear nonproliferation reasons, so BIS did not propose expansion of the foreign-produced direct product rule for ''600 series'' items to countries of concern for nuclear proliferation and does not adopt such an approach in this final rule.

B. General Order 5

As described above in section III.C., BIS is amending part 736 to add General Order No. 5 to Supplement No. 1.

X. Part 738—CCL Overview and the Country Chart

This rule implements changes proposed in the July 15 (framework) rule to paragraph (b) of § 738.2 (Commerce Control List (CCL) structure) by adding the new terms ''end items,'' ''attachments,'' ''parts'' and ''systems'' to the description for Product Group A in order to describe the scope of items within CCL Product Group A with the more precise terms that are added to part 772 by this rule.

BIS also adopts revisions to paragraph (c) of § 738.2 (Order of review) to provide a cross reference to the new Supplement No. 4 to part 774—Commerce Control List Order of Review that is also being added in this final rule. This new Supplement No. 4 sets forth the steps that should be followed in classifying items that are ''subject to the EAR'' and provides new guidance for how to classify items in light of the addition of the ''600 series'' of ECCNs to the CCL and the new definition of ''specially designed'' also being added with this final rule.

BIS had proposed in the July 15 (framework) rule to add to paragraph (d)(1) of § 738.2 (Commerce Control List (CCL) structure) a reference to items warranting national security or foreign policy controls at the determination of the Department of Commerce under ECCN 0Y521. BIS received one comment suggesting that the descriptor for ECCNs that have ''5'' as their third digit should be, ''Items subject to license requirements described in § 742.6(a)(7).'' BIS does not accept this suggestion to allow broader applicability than the items described in § 742.6(a)(7). Another commenter recommended adding ''Unilateral National Security or Foreign Policy Reasons'' as a revised reason for control for ECCNs that have ''5'' as their third digit. This recommendation is also not accepted. BIS notes that in the final rule implementing the 0Y521 series, (4/13/12, 77 FR 22191) the EAR indicates that the determination to control ECCNs that have ''5'' as their third digit was made by the Department of Commerce, and the term ''Items warranting national security or foreign policy controls at the determination of the Department of Commerce'' provides a more precise descriptor for these ECCNs.

In § 738.2(d)(1), the July 15 (framework) rule proposed to add a reference to the ''600 series'' to indicate that items in which the third character is a ''6'' are ''600 series'' items and controlled because they are Wassenaar Arrangement Munitions List (WAML) and formerly USML items subject to the jurisdiction of the EAR. As described in Section XXIII (part 772—Definitions (including Specially Designed)) in this rule, this rule also adds a definition of ''600 series'' to provide additional information to the public regarding this control series. To explain the meaning of the last two numbers in ''600 series'' ECCNs, this rule adds a new paragraph (d)(1)(iv) that indicates that the last two characters of each ''600 series'' ECCN, with few exceptions, track the WAML categories for the types of items at issue. In order to stay consistent with the general structure of the groups within the CCL Categories, the Wassenaar Arrangement ML21 (''software'') and ML22 (''technology''), however, are rolled into the existing D (''software'') and E (''technology'') CCL product groups. The WAML numbering structure for the last two characters is generally used rather than the USML numbering structure because the majority of items to be transferred are subject to the WAML, although the ''600 series'' is not limited to items on the WAML. Thus, the numbering scheme is generally consistent with such controls. BIS, however, deviated from this scheme with respect to the new controls on military aircraft engines and related items that fall under new ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619. WAML Category 19 controls directed energy weapons, but BIS has used the ''19'' ECCN suffix in order to track the new USML category XIX that identifies the military aircraft engines and related items that were formerly controlled under USML Category VIII(b).

This structure makes it easier to see that the United States continues to control all WAML items. In addition, multinational companies that must deal with both the USML system and the numbering system of most other allied countries (which generally track the WAML) should find compliance and tracking of controlled items somewhat easier.

BIS received one comment suggesting that the ''600 series'' descriptor should be ''Commerce Munitions List.'' BIS did not accept the suggestion because it is not creating a new list of controlled items but rather incorporating items formerly subject to the ITAR into the existing Commerce Control List.

This rule revises § 738.2(d)(2)(ii) to state that in some ''600 series'' ECCNs, the STA license exception paragraph or a note to the License Exceptions section contains additional information about License Exception STA applicability to that ECCN. This sentence is needed to distinguish the role of STA paragraphs in the License Exception sections of ''600 series'' ECCNs from the role of those paragraphs in other ECCNs where the STA paragraph only denotes ineligibility of STA for destinations listed in § 740.20(c)(2). Upon the effective date of this final rule, those destinations will be listed in Supplement No. 1 to part 740, Country Group A:6. As described below in more

detail and briefly mentioned above, Country Group A:6 is one of the new country groups added to the EAR in this final rule. BIS proposed this revision to the text of § 738.2(d)(2)(ii) in the November 7 (aircraft) rule and received no comments. This final rule adopts the proposed text without change. As a conforming change, BIS is also replacing the phrase ''eight destinations listed in § 740.20(c)(2) of the EAR'' where it appears in ECCN entries in part 774 with the phrase ''destinations listed in Country Group A:6 (see Supplement No. 1 to part 740 of the EAR).''

XI. Part 740—License Exceptions

License Exceptions are published authorizations set forth in part 740 of the EAR that allow exports, reexports, and in-country transfers that would otherwise require a license to proceed without one if certain conditions are met. License Exceptions operate under the EAR the same way exemptions operate under the ITAR.

A general principle underlying the incorporation of the ''600 series'' into the EAR is that, because items subject to the EAR are less militarily significant than those subject to the ITAR, EAR exceptions should not be more restrictive than comparable ITAR exemptions. BIS recognizes that several commenters to the June 21 (transition) rule agreed with this principle. The June 21 (transition) rule proposed to harmonize the provisions of several EAR license exceptions with several ITAR exemptions, as set out in detail below, but only insofar as they are permitted by law and otherwise relevant to ''600 series'' items and other items subject to the EAR. In particular, BIS has no authority to change the scope of license exceptions available for items controlled for MT reasons because of statutory restrictions. See section (6)(*l*) of the Export Administration Act of 1979, as amended, 50 U.S.C. app. § 2405(*l*).

When a license exception authorizes reexports under certain terms and conditions, there is no national security or foreign policy objective met by restricting in-country transfers that also meet those terms and conditions. In the June 21 (transition) rule, BIS proposed revising License Exceptions TMP and GOV (§§ 740.9 and 740.11, respectively) to explicitly provide authorization for in-country transfers.

One commenter responding to the July 15 (framework) rule stated that ''no limitation should be placed on in-country transfers of licensable items.'' The commenter continued, ''[t]he prospect that an item exported to an entity in a foreign country may be transferred to another entity in the same licensed country is inherent in the assessment of an export transaction. Accordingly, part 740 of the EAR should be revised to exclude all mentions of ''transfers (in-country).'' BIS does not agree with this comment. The EAR's end-use and end-user controls evidence a longstanding policy that an assessment of an export transaction involves more than the country of destination. Further, conditions on most licenses restrict subsequent transfer of the licensed items. Rather than include in-country transfers in some license exceptions and not in others when the policy rationale is the same, this rule revises § 740.1 to state that, when a license exception authorizes reexports, in-country transfers meeting the terms and conditions of the reexport are also authorized. While this specific revision was not proposed in the June 21 (transition) rule, it is a logical outgrowth of BIS's original proposal that stems from reviewing the related public comment and further thinking about how in-country transfers are addressed in part 740.

A. Restrictions

Section 740.2 describes restrictions on all license exceptions, and this rule adds certain restrictions specific to ''600 series'' items in new paragraphs (a)(12) through (a)(16).

In the July 15 (framework) rule, BIS proposed adding to § 740.2 new paragraphs (a)(12) (restricting the use of license exceptions to countries subject to a United States arms embargo) and (a)(13) (restricting the use of license exceptions for ''600 series'' items destined to countries other than those listed in proposed (a)(12)). In the June 21 (transition) rule, BIS proposed that in addition to items destined to arms-embargoed countries, items shipped from or manufactured in those destinations also be restricted from license exceptions. With this final rule, BIS adopts the (a)(12) proposal with an additional change. Rather than list the countries in (a)(12), they are being identified in a new Country Group D:5 (Supplement No. 1 to part 740 of the EAR), as explained below in the Country Groups discussion (Section XI.H). The restriction on using license exceptions for ''600 series'' items destined to, shipped from, or manufactured in a destination subject to a United States arms embargo as described in § 126.1 of the ITAR remains set forth in paragraph (a)(12). One commenter recommended deleting Yemen from the (a)(12) list of countries to reflect an amendment to the ITAR; BIS agrees with this comment, and this rule does so in Country Group D:5. Further comments received on paragraph (a)(12) are described below, as part of the discussion of Country Groups in Section XI.H.

Paragraph (a)(13) is adopted as set forth in the July 15 (framework) rule. The license exceptions available for ''600 series'' items are listed in paragraph (a)(13). Each exception is available according to the terms and conditions set forth in its section and subject to the restrictions in § 740.2.

Finally, in the June 21 (transition) rule, BIS proposed adding to § 740.2 two new paragraphs (a)(15) and (a)(16) restricting the availability of license exceptions for certain ''600 series'' exports for which prior notification to Congress will be made. This rule changes BIS's original proposal, as explained below in the discussion of ''600 Series Major Defense Equipment'' in Section XIII.B.

B. License Exception TMP

This rule revises § 740.9, License Exception Temporary imports, exports and reexports (TMP) paragraphs (a) (Temporary exports and reexports) and (b) (Exports of items temporarily in the United States) to streamline the existing exception consistent with the retrospective review and regulatory improvement directed in E.O. 13563, and to broaden the exception to correspond to certain ITAR exemptions. BIS proposed these revisions in the transition rule.

BIS received three comments stating that, to correspond to the ITAR, TMP should provide for the return or disposal of items within four years rather than the current one year, and a further five comments stating that when authorization to retain the item abroad beyond one year is requested, that authorization be valid for four years rather than a one-time extension of six months.

BIS does not agree that the term of TMP should be four years in order to correspond to the ITAR. Under the ITAR, most exemptions for temporary export require some other form of authorization to be in place for the exemption to be available. These requirements mean that simply extending TMP to a four-year term generally would be significantly more expansive than the ITAR exemptions. However, to better approximate ITAR controls, this rule revises TMP to provide that, when authorization to retain the item abroad beyond one year is requested, the term of the authorization may be for a total of four years rather than just an additional six months.

Four commenters questioned the term ''order to acquire,'' seeking clarification on whether a purchase order would be considered an example of an order to acquire an item. BIS confirms that a purchase order would be one such example, and adds that example in this final rule. Four commenters asked for clarification that the term ''U.S. persons and their employees'' referred to employees of foreign branches. BIS is maintaining the existing definition in License Exception TMP of ''U.S. persons,'' which does not include foreign branches. Thus, no regulatory change is required.

Seven commenters stated that § 740.9(a)(3)(i)(B), as proposed in the June 21 (transition) rule, introduces ''additional recordkeeping requirements'' for a temporary export of technology as a tool of trade by a non-U.S. person. In fact, prior to publication of that proposed rule, that requirement existed in the EAR in § 740.9(a)(3)(iv)(A)(2). It was originally published on December 12, 2007 (72 FR 70509) in a rule that established the ability to temporarily export technology as a tool of trade under License Exception TMP, which had previously been limited to commodities and software. This 2007 expansion of TMP was based in part on § 125.4(b)(9) of the ITAR, which allows certain exports of technical data by U.S. persons. The 2007 rule also required that the employers of non-U.S. persons document the need to travel, as a safeguard to the expansion of the tools of trade provision of TMP beyond U.S. persons. This restriction does not impose additional requirements on any permanent release of technology, because License Exception TMP does not authorize any new (i.e., previously unauthorized) release of technology. It authorizes temporary exports of that technology as a tool of trade. BIS believes the commenters misconstrued this provision, and this final rule adopts it as proposed in the June 21 (transition) rule.

In the June 21 (transition) rule, BIS proposed that temporary exports under License Exception TMP to a U.S. person's foreign subsidiary, affiliate, or facility abroad would no longer be limited to exports to Country Group B countries in order to make TMP consistent with § 123.16(b)(9) of the ITAR. Three commenters recommended adding ''materials'' to the types of items eligible for this provision. BIS did not make this change. Materials are unlikely to be returned in the form received and are inappropriate for this provision.

Four commenters recommended replacing the country scope ''E:2, Sudan and Syria'' with ''E:1'' throughout TMP. BIS agrees that this expression is clearer and has made this change.

One commenter requested that the requirement for personal inspection of body armor be dropped. In this final rule, BIS has dropped the entire paragraph relating to body armor. The issue will be addressed in a future final rule that will address controls on personal protective equipment.

This rule updates the provision authorizing certain tools of the trade for Sudan by removing outdated technical parameters and ECCN paragraph references that no longer exist.

Consistent with § 123.19 of the ITAR, this rule adds a note to the temporary imports paragraph of License Exception TMP stating that a shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license. BIS did not receive public comments on this note and adopts it as proposed in the June 21 (transition) rule. A note regarding shipments from one location in the United States to another location in the United States via a foreign country, also proposed in the June 21 (transition) rule, was not adopted in this final rule. BIS received no comments on this note, but, upon further review and interagency consultation, BIS determined that the concept is already implicit in § 734.2(b)(8). Therefore, BIS deleted the proposed note.

An additional note explaining that defense articles on the USMIL are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447, proposed in the June 21 (transition) rule, was not adopted because it duplicates the USMIL description added to part 734 (described above).

Three commenters requested confirmation that § 740.9 (b)(3) applies to technology. BIS confirms that it does; technology is a component of the definition of ''items,'' as defined in § 772.1.

C. License Exception RPL

In the July 15 (framework) rule and the June 21 (transition) rule, BIS proposed changes to § 740.10 (Servicing and replacement of parts and equipment (RPL)). The July 15 (framework) rule proposals all related directly to servicing and replacement of ''600 series'' items. The June 21 (transition) rule proposals were related to a similar ITAR exemption.

In the July 15 (framework) rule, BIS proposed revising RPL to: (1) Add ''600 series'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' to the scope of this authorization; (2) impose restrictions on the use of License Exception RPL for the export or reexport of ''parts,'' ''components,'' ''accessories,'' and ''attachments'' classified in ''600 series'' ECCNs; (3) authorize exports and reexports of certain items ''subject to the EAR'' to or for a defense article described in an export or reexport authorization issued under the authority of the AECA; and (4) exclude from authorization the export or reexport of ''parts,'' ''components,'' accessories,'' or ''attachments'' that are defense articles identified on the USML (22 CFR §§ 120.6 and 121.1). In this final rule, BIS adopts all of these proposals.

One commenter to the July 15 (framework) rule suggested that ''accessories'' and ''attachments'' be removed from License Exception RPL, as they are by definition not necessary for items' operation. BIS does not agree with this suggestion, as servicing and replacement of ''accessories'' and ''attachments'' may be within the scope of transactions conducted under this license exception and thus should be authorized.

The June 21 (transition) rule proposed to revise RPL to allow export or reexport of spares up to $500 in total value, and to remove the requirement that the ability to return serviced commodities and software or replace defective or unacceptable U.S.-origin equipment be limited to the original exporters. BIS is not adopting these proposals at this time, for the reasons explained below.

Six commenters addressed this proposal, most requesting clarification of the relationship between the shipment of spares under proposed revised RPL and low-value shipments under existing License Exception LVS. Two commenters proposed different ways of valuing the spares or suggested placing a value limit on the item shipped or the transaction rather than the shipment. One comment recommended restructuring the exception into separate paragraphs for spares as distinguished from one-for-one replacement parts, and another comment recommended numerous changes, amounting to a thorough revision of the license exception. Additionally, in response to the July 15 (framework) rule, BIS received a comment recommending that RPL define enhancement resulting from servicing or replacement of parts or components as ''affecting a controlled characteristic of an end item.''

Unlike License Exceptions TMP and GOV, BIS did not propose a wholesale clarification and streamlining of RPL in

the June 21 (transition) rule. Based on public comments and internal analysis, however, BIS has concluded that a completely revised RPL should be proposed separately as part of a retrospective regulatory review, using public comments already received as part of the basis for the new proposal. While the June 21 (transition) rule proposal to amend RPL was related to a similar ITAR exemption, it was not specific to the ''600 series.'' As such, and because BIS plans to propose comprehensive revisions to RPL, this final rule adopts only the changes to RPL proposed in the July 15 (framework) rule. It does not adopt changes proposed in the June 21 (transition) rule or address comments received in response to those proposed changes in this final rule.

D. License Exception GOV

Consistent with the retrospective review and regulatory improvement directed in Executive Order 13563, the June 21 (transition) rule proposed to completely revise § 740.11, License Exception GOV (Governments; International Organizations; International Inspections under the Chemical Weapons Convention; and the International Space Station). Prior to the effective date of this rule, License Exception GOV contained references to items on the Wassenaar Arrangement's Sensitive and Very Sensitive Lists, which necessitated annual regulatory revisions and was so lengthy that it required a supplement to the section. The June 21 (transition) rule proposed shortening and simplifying License Exception GOV by including the Sensitive and Very Sensitive Lists as supplements to part 774, described below in Section XXIV.F. BIS received no public comments on this simplification, and this final rule adopts it without change.

The July 15 (framework) rule proposed restricting certain ''600 series'' items' eligibility for License Exception GOV, and the November 7 (aircraft) rule proposed changes with respect to restricting certain aircraft-related software and technology as listed in a proposed Supplement No. 4 to part 740. The December 6 (gas turbine engines) rule added restrictions on certain engine-related software and technology to Supplement No. 4 to part 740. This final rule, however, does not adopt the proposal to include Supplement No. 4 to part 740, and instead incorporates these restrictions into the relevant ECCNs for ease of use, as described below in Sections XXIV.C and .D.

As proposed in the June 21 (transition) rule, this rule expands GOV to authorize items consigned to non-governmental end users, such as U.S. Government contractors, acting on behalf of the U.S. Government in certain situations, subject to written authorization from the appropriate agency and additional export clearance requirements. One commenter on the June 21 (transition) rule noted its agreement with BIS's proposal to extend GOV to U.S. Government contractors. Two commenters on the June 21 (transition) rule suggested that the requirement for written authorization be deleted in favor of relying on the actual contract, noting that certification is a burden on both the exporter and on the Department of Defense, and that OFAC's Sudanese Sanctions Regulations (31 CFR part 538) are less restrictive with a similar purpose. Another commenter requested confirmation that the exception includes subcontractors under certain contract clauses, and asked that the final rule include examples and scenarios. This final rule adopts as proposed the requirement for written authorization and does not allow use of the license exception by subcontractors. Given the broad scope of items authorized under the GOV license exception, written authorization and a direct relationship between the exporter and the U.S. Government is necessary to ensure proper use of the exception. BIS does not include examples in this final rule, but will attempt to generate such scenarios to include in outreach efforts. Four commenters recommended that references to A:1 countries, a narrow group of close allies, be replaced with ''Wassenaar member countries,'' a broader group. Another commenter recommended expanding the provisions available for cooperating governments to include all of Country Group B. Given the broad scope of items authorized under the GOV license exception, BIS considers the suggested changes to the country scopes too broad, and therefore does not accept them.

One commenter recommended deletion of the requirement for a statement that the U.S. Government owned the property being exported because it was too broad. BIS agrees and has limited the requirement to Government Furnished Equipment. In response to a request for clarification of the scope of a provision describing programs related to capacity-building and counterterrorist operations, BIS determined that the provision was subsumed by a less specific provision describing cooperative efforts with foreign governments or international organizations, and deleted the unclear provision.

This rule also adopts provisions for exports made under the direction of the U.S. Department of Defense consistent with §§ 125.4(b)(1), 125.4(b)(3) and 126.6(a) of the ITAR. This provision was proposed in the June 21 (transition) rule and received no comments.

The June 21 (transition) rule proposal to add a note regarding authorization of Foreign Military Sales is not adopted in this final rule. Authorization of Foreign Military Sales is addressed above in section III.B.

This rule adopts provisions in the June 21 (transition) rule that expands the scope of countries eligible to receive items on the Sensitive List under § 740.11(a) (International Safeguards) and (c) (Cooperating Governments) to include the governments of those 36 countries listed in new Country Group A:5, discussed below in Section XI.H. BIS received no comments on this proposal.

This rule makes one correction to GOV as proposed in the June 21 (transition) rule. Section 740.11(b)(2)(iii)(G) has been amended to remove ''defense articles'' from the parenthetical in that paragraph since BIS does not have jurisdiction over items subject to the ITAR.

E. License Exception TSU

This rule implements revisions proposed in the June 21 (transition) rule to § 740.13 License Exception Technology and Software—Unrestricted (TSU) that would include training information in the operation technology authorized, as it is in § 125.4(b)(5) of the ITAR. This rule also adds TSU authorization for the release of software source code and technology in the United States by U.S. universities to their bona fide and full-time regular foreign national employees to correspond with a similar authorization in § 125.4(b)(10) of the ITAR. Further, this rule amends TSU to add an authorization corresponding to § 125.4(b)(4) of the ITAR for copies of technology previously authorized for export to the same recipient.

Two commenters stated that the revised TSU for university employees should not be subject to the end-use and end-user restrictions in part 744 of the EAR because such restrictions do not now exist in the comparable ITAR exemption at § 125.4(b)(10). In addition, the commenters said that TSU should not preclude the unlicensed release of encryption-related software controlled for ''EI'' and other software and technology controlled for ''MT'' (Missile Technology) reasons because ITAR § 125.4(b)(10) does not now preclude the release of such software and

technology to bona fide university employees under the exemption. This rule does not make the suggested revisions. While license exceptions under the EAR should not be more restrictive than corresponding exemptions under the ITAR, license exceptions must be implemented within the framework of the EAR. The restrictions proposed in the transition rule are consistent with those imposed on other license exceptions for national security and foreign policy reasons, and restrictions on MT items are statutory. Another commenter recommended that the provision be extended to entities other than universities. BIS does not accept this recommendation. This provision broadened TSU to correspond with an ITAR exemption for university employees; its expansion to other entities would exceed that rationale.

One commenter suggested that the university employee's requirement not to transfer technology survive his employment at the university; BIS agrees, because export controls on technology exist independently of nondisclosure or other agreements. Another commenter suggested striking the prohibition on ''establishing or producing items,'' because the phrase is not uniquely defined in the EAR and does not provide clarity about what it excludes. BIS agrees with this analysis and has made this revision.

With respect to paragraph (g), one commenter suggested deleting ''copies'' from the heading and revising the text accordingly. BIS does not accept this recommendation. ''Copies'' is an accurate description of the intended scope of the provision.

F. License Exception STA

This final rule describes how and under what circumstances License Exception STA may be used for ''600 series'' items. This rule implements the proposals regarding License Exception STA that appeared in the July 15 (framework) rule, the November 7 (aircraft) rule and the June 21 (transition) rule. Generally, License Exception STA will be available for exports, reexports and transfers (in-country) of ''600 series'' items to any of the 36 destinations currently listed in § 740.20(c)(1) (which this rule will move to a new Country Group A:5 in Supplement No. 1 to part 740), but not to the destinations currently in § 740.20(c)(2) of the EAR (which this rule will move to a new Country Group A:6 in that supplement). As with all license exceptions in the EAR, its use is optional. If an exporter, for example, prefers to export an item otherwise eligible to be exported under License Exception STA under the authority of a license, then the exporter may apply for such a license.

License Exception STA may not be used for any ''600 series'' items identified in the relevant ECCN as not being eligible for export under STA. It may not be used to export, reexport, or transfer (in-country) ''600 series'' items to persons, whether non-governmental or governmental, unless those persons are in and, if natural persons, nationals of a country listed in Country Group A:5 or the United States *and either* (a) the *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government, *or* (b) are for the ''development'' or ''production'' of an item in one of the countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States. It may not be used to export, reexport, or transfer (in-country) end item aircraft described in ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g) of the EAR. It may not be used to export, reexport, or transfer (in-country) ''600 series'' items ''subject to the EAR'' if they are ''600 Series Major Defense Equipment'' and the value of such items in the contract requiring their export exceeds $25,000,000. This rule also will add provisions to the License Exception STA consignee statement that will apply only to shipments containing ''600 series'' items. The consignee will have to acknowledge the end-use and consignee restrictions that apply to ''600 series'' shipments under License Exception STA and consent to U.S. Government post-shipment verifications.

BIS is implementing these changes to License Exception STA with respect to ''600 series'' items because such items are, by definition, military items or specially designed for military applications and thus warrant controls beyond those dual-use and civil items eligible for export under STA. This revised License Exception STA will enhance national security because it will, with respect to such items, (a) allow for greater interoperability between the United States and its NATO and other multi-regime allies because it will permit more efficient and quick trade in such items than is now possible under the ITAR, (b) enhance the United States industrial base by reducing the incentive for buyers in such countries to avoid or design out such U.S.-origin content and, thus, create more opportunities to be regular, predictable suppliers to buyers in such countries, (c) allow the government to focus its limited licensing resources on transactions of concern rather than those that are routinely approved, and (d) allow for greater enforcement- and compliance-related visibility into such transactions.

BIS received several comments concerning License Exception STA as it applies to ''600 series'' items. The comments and BIS's responses are summarized below.

One commenter noted that, in some instances, ''600 series'' ''components'' could be sent to an STA eligible destination for incorporation into an end item that would be exported to a non-STA eligible destination. One commenter requested that BIS ''pre-approve'' such end items for *de minimis* treatment. Another commenter stated its belief that License Exception STA may not be used to export a part that will be incorporated into an end item that will be shipped to a non STA eligible destination. This commenter asked that BIS clarify that the exporter of the ''600 series'' part could list the manufacturer of the end item as the end user on a license application because the end item would not be subject to the EAR.

License Exception STA states that ''600 series'' items must be for ultimate government end-use to be eligible. If a ''600 series'' part or component to be exported is destined for ultimate end use by a government that is not among the STA–36 or the United States, then a license is required to export the part or component. However, there may be a third scenario in which items are not destined for end use in an STA–36 country but are destined for an end use that has been explicitly authorized by the U.S. Government. To address this scenario, BIS has made a change to STA as discussed below in Section XI.G.

One commenter stated that paragraph (c)(1) in License Exception STA appears to exclude from STA all ECCNs that have antiterrorism as a reason for control. This same commenter expressed a belief that only governments would be eligible recipients of ''600 series'' items under License Exception STA. The commenter noted that the latter limit could seriously disrupt supply chain activity because licenses would be needed to supply vendors who supply STA eligible governments.

BIS believes that this commenter misconstrues the terms of License Exception STA as proposed in the July 15 (framework) rule, the November 7 (aircraft) rule and the June 21

(transition) rule. Paragraph (c)(1) of § 740.20 refers to ''Exports, reexports and in country transfers in which the only applicable reason for control is . . ..'' This text in the June 21 (transition) rule is unchanged from the current text of paragraph (c)(1), except in that it identifies the authorized destinations and nationals by Country Group A:5. BIS has consistently construed the phrase ''applicable reason for control'' to mean the reasons for control that would impose a license requirement on the export, reexport or in country transfer at issue, not every reason for control that appears in the ECCN that covers the item being shipped. In accordance with part 742, AT controls do not apply to any destination for which License Exception STA is available. As proposed in the July 15 (framework) rule and the November 7 (aircraft) rule, this rule makes private sector parties eligible recipients of ''600 series'' items exported under License Exception STA if the ''600 series'' item is for *ultimate* end use by a designated agency of an eligible government or for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing in an eligible country or the United States for use by such a government agency or by the United States Government. Because ''600 series'' ECCNs do not specify controls on ''use'' software or technology, the term ''use'' does not appear for those items in this license exception.

The June 21 (transition) rule contained a note 2 to paragraph (c) providing that License Exception STA may authorize export, reexport or in country transfer of ''600 series'' items only if the purchaser, intermediate consignee, ultimate consignee and end user have previously been approved on a license issued by BIS or the Directorate of Defense Trade Controls. This proposal elicited a number of questions and comments.

Commenters wanted to know whether the previous license had to be for the same commodity as will be shipped under License Exception STA, whether the validity of the prior license for purposes of STA eligibility continues after the name of the party changes and whether the prior license for a party authorized use of License Exception STA for all locations of that party within one country.

The purpose of this requirement is to provide some assurance that the foreign parties in transactions involving ''600 series'' items under License Exception STA are reliable as evidenced by the fact that either BIS or DDTC have approved licenses for transactions in which that party was involved. Plans to export under License Exception STA a different item than that under previous licenses do not alter the fact that the U.S. Government had vetted through the licensing process the foreign parties at issue in the transaction. Also not affecting the conclusion that the U.S. Government has vetted a foreign party through the licensing process is if the company changes its name or has offices at various addresses. Because the approval must have been for the party that will receive items under STA, an approval for a different entity, even if it is related to or affiliated with that party, would not meet the requirements for note 2 to paragraph (c)(1). BIS believes that no changes are needed to the text proposed in the June 21 (transition) rule to implement these points.

One commenter asked whether exporters would be required to provide the information about approved parties and, if so, specifically what information would have to be provided and how often would it have to be provided. The commenter suggested that the exporter should be required to provide the information only for the initial export under License Exception STA to the party.

The June 21 (transition) rule did not propose any requirement that the exporter report to BIS information about the prior licenses. As with other license exceptions, by entering STA (or the corresponding AES license code) into AES, the exporter represents to the United States Government, subject to penalties for false statements, that all of the requirements of License Exception STA have been met. In addition, parties to transactions that are subject to the EAR must provide BIS or other authorized U.S. Government agency with documents relating to the transaction upon request. BIS believes that no change to the text as proposed in the June 21 (transition) rule is needed on this point.

Some commenters noted that parties wishing to use STA would not have access to licensing records from which they could determine whether the party to which they wish to ship under License Exception STA had previously been on an approved license. These commenters recommended several changes to address this issue. One recommendation was to remove the requirement because ordinary screening of customers as part of company compliance programs should be adequate and, especially with exports to close allies, additional measures should not be needed. Another recommendation was that the government, which has all the licensing records needed to determine whether a party was on a previously approved license, could provide the information (including known name changes) on a Web site. Additionally, the government could implement a procedure whereby AES could notify an exporter who wishes to use License Exception STA for a ''600 series'' item that the consignee is not an eligible recipient. Such a notice could be based on the fact the consignee has not previously appeared on an approved license or on other non-public information that the government possesses.

Items in the ''600 series'' are military items or items that are designed for military application. Although they are less significant military items that the President has determined do not warrant control on the USML, they nonetheless, as military items, warrant export under more extensive safeguards against diversion than are applied to some of the other items that are subject to the EAR. The presence of a party on a previous license provides such a safeguard for such items because it indicates that the United States Government has reviewed that party and approved a transaction in which that party participated. Although providing access to the information obtained in connection with a license application about the identity of parties on approved licenses to the public via a Web site would likely make use of License Exception STA for ''600 series'' items easier, Section 12(c) of the Export Administration Act precludes such disclosure absent a finding that doing so is in the national interest. Given the widespread access to items posted on public Web sites, including access by persons not intending to use License Exception STA, such a finding would be unlikely. Attempting to modify AES in the way suggested is not yet feasible. Moreover, AES filings for ''600 series'' items will take place shortly before the time of export. An exporter relying on AES to screen out ineligible consignees would have done all of the work necessary for an STA shipment including furnishing the ECCN(s) to and obtaining the required statement from the consignee only to find out almost at the moment of shipment that the consignee is not eligible. BIS expects that, in most instances, a consignee that is willing to make the commitments and certifications required under License Exception STA will also be willing to confirm to the potential exporter, reexporter or transferor whether it has been a party on any approved licenses. Accordingly, BIS is making no substantive changes to the note to

paragraph (c)(1) in response to these comments. (See Section XX below for recordkeeping requirements.)

The June 21 (transition) rule would require consignees of ''600 series'' items to state that the items are for ultimate end use (or will be used in development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of an item for ultimate end use) by an authorized government agency or a person in the United States; and to consent to an end-use check. One commenter questioned whether a private consignee would be able to consent to an end-use check on a government end user.

BIS agrees that a private party should not be expected to make a commitment on behalf of a government. In addition, the governments eligible to ultimately receive ''600 series'' items under License Exception STA were selected because of their status as NATO allies of the United States or multi-regime members. Therefore, this final rule revises the requirement to make clear that only a non-government consignee is required to consent to an end-use check. In such an instance, BIS recognizes that because a condition of STA is that ''600 series'' items must ultimately go to an authorized government end user or a user in the United States, the items may no longer be on the consignee's premises. Nevertheless, an end use check at the consignee's premises may provide information that would help confirm the ultimate disposition of the items.

G. Other License Exception STA Changes

The November 7 (aircraft) rule proposed creating a new Supplement No. 4 to part 740 that would list certain ''600 series'' items that are not eligible for License Exception STA. Both the November 7 (aircraft) rule and the December 6 (gas turbine engines) rule proposed items for inclusion in this new supplement. Upon reflection, BIS has concluded that listing these ineligible items in the ECCNs to which they apply will make the ineligible items more readily apparent to readers than will listing them in a separate supplement. Accordingly, this rule does not list these items in a supplement as proposed, but in ECCNs 9D610, 9E610, 9D619 and 9E619. This change is purely one of format. The ineligible items listed in those four ECCNs are the same as those proposed in the November 7 (aircraft) rule and the December 6 (gas turbine engines) rule.

The conditions under which License Exception STA may be used have been revised to allow for situations where the United States would, for national security, foreign policy, or other reasons, explicitly authorize its use in circumstances not yet contemplated. In response to the June 21 (transition) rule, commenters requested that BIS allow for the use of STA to authorize certain exports in situations in which the exporter knows that the items may be reexported to both STA–36 and non-STA–36 destinations. This new provision is designed to give the U.S. Government, through the normal interagency license review process, flexibility to craft license authorizations and conditions to address atypical fact patterns and allow for the use of STA in situations that would not otherwise be authorized. For example, a foreign consignee may receive a U.S. Government authorization to reexport from an STA–36 country a foreign-made item containing controlled U.S.-origin content. The new provision would allow the continued use of STA for exports of controlled items to a foreign consignee in one of the STA–36 countries so long as the foreign consignee has a valid license authorizing such a use of STA. The consignee would need to certify that it has such a license and, in addition, provide a copy of it to the U.S. exporter before License Exception STA may be used.

H. Country Groups

This rule creates three new country groups in part 740 of the EAR following consideration of public comments described below recommending reorganization of various lists of countries in the EAR. Specifically, this rule adds two new columns to Country Group A to incorporate the lists of countries previously set forth in the text of License Exception STA, and it adds one new column to Country Group D to incorporate the list of countries subject to a U.S. arms embargo proposed in the July 15 (framework) rule to be set forth in § 740.2. Several commenters addressed the various groupings of countries in the EAR and noted possible ways to reduce the number of such groupings or highlighted areas where the current groupings and those proposed in the June 21 (transition) rule could be simplified. One commenter noted that many such groupings were nearly identical to each other and to existing Country Groups in Supplement No. 1 to part 740 of the EAR. This commenter suggested that several such groupings be replaced by existing country groups. This commenter also recommended that certain countries listed in § 740.2(a)(12) of the transition rule that currently are subject to limited exceptions to the policy of denial under § 126.1 of the ITAR be removed from § 740.2(a)(12) in the final rule; BIS did not accept this recommendation because BIS believes it is appropriate to limit the use of license exceptions to countries subject to a U.S. arms embargo as a matter of foreign policy. One commenter suggested that the countries currently listed in § 740.2(a)(6) could be combined with the countries listed in proposed § 740.2(a)(12) with a single *de minimis* level for both groups. Other commenters recommended a 10% *de minimis* level for both § 740.2(a)(6) and § 740.2(a)(12) countries. A commenter also substituted the term STA–36 for references to destinations listed in § 740.20(c)(1), demonstrating the usefulness of a shorthand reference for this group of countries.

BIS recognizes that a number of the country groupings in the EAR are similar to each other and to the Country Groups in Supplement No. 1 to part 740 of the EAR. The small differences between some of these country groupings reflect the fact that each country grouping generally implements a policy tailored to certain destinations that do not exactly match the broad Country Groups in Supplement No. 1 to part 740. A comprehensive revision of country groupings in the EAR is outside the scope of this rule, but BIS acknowledges that it is an appropriate subject to be examined in the future as part of a retrospective review.

In addition, the countries listed in § 740.2(a)(6) are countries that are subject to broad export controls and, in some cases, comprehensive embargoes that encompass items of no military significance. The countries listed in § 740.2(a)(12) of the proposed transition rule are subject to United States arms embargoes. Moreover, paragraph (a)(6) applies to all items that are subject to the EAR whereas paragraph (a)(12) applies to the distinctly military items that are in ''600 series'' ECCNs. BIS believes that the distinctly military nature of ''600 series'' items justifies a stricter *de minimis* treatment compared to the broader universe of items that are subject to the EAR, and thus BIS does not adopt the commenter's suggestion.

Although not adopting their specific recommendations, BIS believes that these commenters raised valid points concerning the need for clarity in grouping countries in the EAR. Accordingly, this rule revises Supplement No. 1 to part 740 to add new columns A:5 and A:6 to Country Group A and to add a new column D:5 to Country Group D. Column A:5 lists the 36 destinations that currently are in

§ 740.20(c)(1), Column A:6 lists the eight destinations that currently are in § 740.20(c)(2), and Column D:5 lists the destinations subject to a United States arms embargo that were listed in § 740.2(a)(12) of the June 21 (transition) rule and July 15 (framework) rule. These changes are to format only and are not intended to change any controls.

XII. Part 742—Control Policy

A. National Security (NS) Review Policy

In the July 15 (framework) rule, BIS proposed revising the review policy for license applications for items controlled for national security reasons by adding a new paragraph (b)(1)(ii) to § 742.4 of the EAR. The proposed rule stated that in addition to the policy set forth in existing paragraph (b)(1)(i) of § 742.4, items classified under the ''600 series'' ECCNs would be subject to a general policy of denial when destined to a country subject to a U.S. arms embargo.

BIS received a comment on the proposed review policy that observed that such a policy would be more stringent than the policy for embargoed destinations and significant items under the ITAR. BIS has revised the proposed review policy in response to a commenter's observation as further discussed below.

To harmonize the EAR's policy with that of the ITAR, a new paragraph (b)(1)(ii) to § 742.4 is adopted to state that when destined for a country listed in D:5 in Supplement No. 1 to Part 740 of the EAR, items classified under ''600 series'' ECCNs will be reviewed consistent with the United States arms embargo (§ 126.1 of the ITAR). Although ''600 series'' items do not warrant control on the U.S. Munitions List, they are nonetheless items specially designed for military uses or applications or otherwise identified on the WAML and thus the stated review policy is appropriate. The scope of the U.S. arms embargoes is, however, not the same for each arms embargoed country. Section 126.1 of the ITAR has a detailed description of the policies for each such country to which BIS will defer.

One commenter noted that the proposed transition rule listed in § 740.2(a)(12) all the countries in § 126.1 of the ITAR, but that the preamble referred only to § 126.1(a) of the ITAR. Although at one point in its text, the preamble to the transition rule referred to § 126.1 of the ITAR, in other places it referred to § 126.1(a). While this comment referred to the section on restrictions on license exceptions, the issue is more strongly related to license review policy. BIS's intent is to apply the general policy of denial for ''600 series'' items to all destinations that are subject to a United States arms embargo. For this reason, BIS is not removing any destinations that are subject to limited exceptions found in other paragraphs of § 126.1 from the list of arms embargoed destinations. The general policy of denial provides adequate discretion to approve a license when the interagency license application review process pursuant to Executive Order 12981, as amended, recommends doing so in accordance with the national security and foreign policy of the United States and if no other law prohibits such approval. In other words, BIS is maintaining the status quo for ''600 series'' items to such destinations to conform to the State Department's policy and practice.

B. Regional Stability (RS) License Requirements

The July 15 (framework) rule proposed to individually list each of the new ''600 series'' ECCNs that would be controlled for RS Column 1 reasons in § 742.6(a)(1), which currently lists in a single sentence all ECCNs or portions thereof that are subject to the RS Column 1 controls of that paragraph. That framework was difficult to read and the listing of ECCNs duplicated information provided by the combination of ECCN entries and the Commerce Country Chart in Supplement No. 1 to part 738. This final rule simplifies and streamlines § 742.6(a)(1), which provides that a license is required for items designated in their ECCNs as subject to RS Column 1 controls to all destinations other than Canada, which is consistent with the format of describing other reasons for control in part 742. This change to § 742.6(a)(1) is in format only; it does not alter the license requirements for any item that is subject to the RS Column 1 reason for control. New paragraph (a)(1) continues to exclude from its coverage items described in paragraphs (a)(2) or (a)(3) of § 742.6 because those items are subject to their own special RS Column 1 controls. To conform to this rule's removal of ECCN 9A018.a, this rule revises § 742.6(a)(4)(i) to remove three references to ECCN 9A018.a.

C. RS Review Policy

BIS proposed in the November 7 (aircraft) rule to revise paragraph (b)(1) of § 742.6 to read that applications for ''600 series'' ECCN items listed in paragraph (a)(1) and destined to a country subject to a U.S. arms embargo would be reviewed in accordance with U.S. arms embargo policies and generally would be denied. In addition, a general policy of denial for a regional stability (''RS'') column 1 reason would apply to license applications for ''parts,'' ''components,'' ''accessories,'' ''attachments,'' software, or technology ''specially designed'' or otherwise required for F–14 aircraft. BIS revised the November 7 proposed license application review policy in paragraph (b)(1) for ''600 series'' ECCN items destined to U.S. arms embargoed countries, stating that such applications generally would be denied. BIS adopts in this final rule the same purpose and rationale described for the national security review policy in Section XII.A. above for the RS review policy, which is that when destined for a country listed in D:5 in Supplement No. 1 to Part 740 of the EAR, items classified under ''600 series'' ECCNs will be reviewed consistent with the United States arms embargo policies (§ 126.1 of the ITAR).

The June 21 (transition) rule proposed that paragraph (b)(1) of § 742.6 be further revised to add a case-by-case review to determine whether the ''600 series'' transaction is contrary to the national security or foreign policy interests of the United States, while retaining all provisions as published in a final rule which implemented the 0Y521 ECCN series, published April 13, 2012 (77 FR 22191). The June 21 (transition) rule proposal for case-by-case review is adopted in this rule without change.

XIII. Part 743—Special Reporting

A. Conventional Arms

The July 15 (framework) rule proposed to create a new semi-annual reporting requirement for ''600 series'' items that would be specifically identified in new § 743.4(c)(1) as items that require reporting under the Wassenaar Arrangement. One commenter described addition of this conventional arms reporting as ''premature'' as it was ''unlikely'' to be applicable to any ''600 series'' items. BIS did not agree with this comment. The framework must be established for this reporting to abide by U.S. multilateral commitments. Section 743.4 is adopted as it was proposed in the July 15 (framework) rule.

B. Major Defense Equipment

As set forth in § 123.15 of the ITAR, Section 36(c) of the Arms Export Control Act requires that a certification be provided to the Congress prior to approval of certain high-value exports of major defense equipment, other defense articles, or firearms. Approvals may not be granted when the Congress has

enacted a joint resolution prohibiting the export. While this process is not statutorily required for items subject to the EAR, BIS proposed in the June 21 (transition) rule to institute similar procedures in the EAR for certain exports of items that were classified as Major Defense Equipment (MDE) under the ITAR and are now subject to the EAR. BIS is adopting these procedures for certain exports of MDE in this final rule. ''600 Series Major Defense Equipment'' means any item listed in ECCN 9A610.a, 9A619.a, 9A619.b or 9A619.c, which has nonrecurring research and development costs of more than $50,000,000 or total production cost of more than $200,000,000. The Defense Security Cooperation Agency (DSCA) maintains a list of MDE items, currently categorized by USML category, available online at *http://www.dsca.osd.mil/samm/ESAMM/Appendix01.htm* (''DSCA List'').

This final rule adopts the July 15 (framework) rule proposal to create a new § 743.5, which provides that BIS will notify the Congress of transactions that include ''600 Series Major Defense Equipment''—i.e., any ''600 series'' items identified on the DSCA List—valued in excess of $14,000,000 for destinations outside of the new Country Group A:5 and $25,000,000 for destinations listed in the new Country Group A:5. Notification will not be required for exports made under License Exception GOV. When a license application is submitted, BIS will draw the necessary information to make the congressional notification from the license application. Section 740.2, Restrictions on License Exceptions, discussed above, is also revised to preclude use of license exceptions, other than License Exception GOV, for such transactions.

BIS received eleven comments on the congressional notification proposal. In general, the commenters complained that notification would be cumbersome and defeat many of the potential efficiencies of the EAR for transitioned items. The commenters also asserted that congressional notification is not required for items subject to the EAR. BIS does not agree with such comments. BIS recognizes that congressional notification procedures may impose a regulatory burden for some export transactions. However, BIS is not requiring notification for any transactions that would not now require notification under the ITAR and the Arms Export Control Act. Thus, there will be no increased burden on exporters as a result of the new notification requirements in the EAR.

Six commenters stated that the threshold for congressional notification should be based on the value of the ''600 series'' items in the license application, not the total contract under which the items are sold. BIS accepts this recommendation. BIS recognizes that the total value of a contract that includes transitioned items may also include substantial sums for items subject to the ITAR or subject to the EAR, but which are not ''600 Series Major Defense Equipment.'' Therefore, to ensure that only transactions that include more than the applicable threshold of ''600 Series Major Defense Equipment'' items trigger the notification requirement, BIS is revising the notification requirement threshold to the value of the ''600 Series Major Defense Equipment'' items included in the contract.

Five commenters requested that BIS specify that dual notification of a transaction is not required. BIS accepts the commenters' request. If a transaction includes more than the threshold amount of ITAR MDE or other ITAR items triggering the ITAR congressional reporting requirement, and also triggers the BIS requirement due to the value of the ''600 Series Major Defense Equipment'' items, it would serve little purpose to require that both BIS and DDTC notify the Congress for the same transaction. Therefore, BIS is revising the notification requirement to state that transactions that have been, or are concurrently being, notified to the Congress by DDTC do not require congressional notification by BIS. One commenter also suggested that applicants must provide notice of prior notification by providing BIS with the Congressional Notification Identification Number on their application in SNAP–R. BIS agrees with the suggestion and has amended the EAR accordingly. BIS, however, will not approve the license for items subject to the EAR until the applicable period for congressional notification has expired.

One commenter noted that the congressional notification procedures require that the exporter provide BIS with the written contract under which the items are being sold, and that this requirement is unique in the EAR. BIS acknowledges that the requirements that exporters whose transactions meet the thresholds for congressional notification to provide the written contract for the sale of the items is unique in the EAR. But, BIS believes that relatively few transactions will require congressional notification each year and that those transactions are of such a size that it is unlikely that they will be concluded without a written contract. Additionally, a written contract is required for these transactions under the ITAR, so there is no increase in regulatory burden.

Four commenters requested that BIS include the definition of Major Defense Equipment in part 772. BIS accepts this recommendation and has included a definition in part 772.

XIV. Part 744—End-User and End-Use Controls

A. ''Military End Use'' in §§ 744.17 and 744.21

In the July 15 (framework) rule, BIS proposed amending the definition of ''military end use'' used in § 744.17 (Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.') and § 744.21 (Restrictions on certain 'military end uses' in the People's Republic of China (PRC)). In both sections, the definition of ''military end use'' was revised to include incorporation into items classified under ''600 series'' Product Groups A, B or C ECCNs and for the ''use,'' ''development,'' or ''production'' of items classified under ''600 series'' Product Group A, B or C ECCNs. For consistency, BIS is making clarifying changes to the proposed language to ensure greater understanding of the scope of the provision. BIS received no public comments on these amendments to the military end use definition, and this final rule adopts the July 15 (framework) rule's proposal without substantive change.

B. China Military End-Use Control

In the June 21 (transition) rule, BIS proposed to make all ''600 series'' items subject to the China Military End Use provision set forth in § 744.21 through a new paragraph (a)(2), which provided a general prohibition on exports to China of ''600 series'' items without a license. One commenter to the June 21 (transition) rule stated that this amendment would create an unnecessary burden for ''600 series'' paragraph .y items and that .y items should only be restricted for export to China if they are intended for a military end use. In addition, the commenter said that there is no need to restate the denial policy for non-.y ''600 series'' items because this is currently reflected in § 742.6 (Regional Stability).

BIS does not agree with this recommendation, and is adopting the June 21 (transition) rule addition of paragraph (a)(2) without change. ''600 series'' items were previously on the USML or the WAML and therefore are

presumptively for a military end use. Accordingly, BIS is imposing under § 744.21 a license requirement for all ''600 series'' items, including paragraph .y items, destined for China. Paragraph .y items are ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for defense articles on the USML or for other military items (i.e., ''600 series'' items), and the definition of ''military end use'' in § 744.21 includes incorporation into a military item. The commenter's concerns regarding an unnecessary burden on paragraph .y items is outweighed by the national security need for a license requirement. As to the commenter's concern regarding restating the denial policy with respect to other ''600 series'' items, paragraph (a)(2) does not do this. Other ''600 series'' items are subject to multiple reasons for control on the CCL as well as to end-use and end-user controls, and different licensing review policies may apply.

After interagency review, BIS is amending the proposed text in § 744.21(f) removing references to ''Product Group A, B or C.'' This change is intended to clarify the intent of the July 15 (framework) rule, which was to maintain the scope of current policy with respect to defense articles that will remain on the USML or defense articles that will transfer to the CCL as ''600 series'' items.

XV. Part 746—Embargoes and Other Special Controls

A. Iraq

The July 15 (framework) rule proposed to revise paragraph (b)(2) of § 746.3 (Iraq) of the EAR to make ''600 series'' items, which are arms or arms-related, subject to the Iraq arms embargo provisions. No comments were received on this provision. This final rule revises that proposal by specifying that license applications for the export, reexport, or transfer to the Government of Iraq of ''600 series'' items will be subject to the review policies set forth for such items in §§ 742.4(b) and 742.6(b) of the EAR to cross reference the review policies set forth in part 742 elsewhere in this rule.

B. UN Embargoes

In the July 23, 2012 final rule on Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations (77 FR 42973), BIS amended § 746.1 to limit the use of license exceptions to countries subject to a United Nations Security Council arms embargo. The July 15 (framework) rule and the June 21 (transition) rule proposed restrictions in § 740.2(a)(12) on license exceptions for ''600 series'' items destined to countries subject to a U.S. arms embargo (a list that includes countries subject to United Nations Security Council arms embargoes). One commenter recommended that BIS make available license exceptions in addition to GOV for items being sent to countries subject to United Nations Security Council arms embargoes as implemented under the EAR. The commenter stated in support of the recommendation that some circumstances in which controls related to arms embargoes could be superseded by license exceptions was contemplated in a proposed amendment to paragraph (b)(3)(vi) (General Prohibition Three—Foreign-Produced Direct Product Reexports) of § 736.2 set forth in the June 21 (transition) rule.

BIS does not agree with the commenter's reasoning and is not adopting the recommendation. Part 746, as stated in § 746.1(a), is the focal point for all the EAR requirements for transactions involving sanctioned and embargoed countries. Thus, the availability of license exceptions to those countries is governed primarily by the provisions in part 746. This rule does amend § 746.1 to clarify that the availability of license exceptions for Iraq, North Korea, and Iran will continue in effect as set forth in § 746.3 (Iraq), § 746.4 (North Korea), and § 746.7 (Iran) rather than being governed by the more general restrictions being implemented in § 746.1.

XVI. Part 748—Applications and Documentation

A. Classification Requests To Confirm That Items Are Not ''Specially Designed''

In response to public comments received regarding the scope of the proposed definition of ''specially designed'' in the June 19 (specially designed) rule, this final rule adds a new paragraph (e) to § 748.3 (Classification requests, advisory opinions, and encryption registrations) to establish a process whereby the public may submit classification requests to confirm that a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''specially designed.'' This new paragraph describes this process and identifies the criteria that must be met and the review criteria that will be used by the Departments of Commerce, State and Defense. A consensus determination of these three agencies is required to confirm that a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software,'' is not ''specially designed'' based on this new paragraph. The policy objective of this new provision is to replicate in the EAR the practice that the State and Defense Departments have adopted with respect to their consideration of commodity jurisdiction requests. Thus, the new paragraph (e) maintains the status quo with respect to the government's consideration of the control status of items that may be within the scope of a ''600 series'' ECCN or other specially designed catch-all provision that might have once seemed to have been within the scope of one of the ITAR's catch-all provisions. In other words, if the State Department would have issued a commodity jurisdiction determination that an item was not within the scope of one of the USML's catch-all provisions and was not otherwise subject to the ITAR, then the Commerce Department, after interagency consensus, would issue a similar classification determination that the same item was not within the scope of a ''600 series'' ECCN.

B. Unique Submission Requirements

1. License Exception STA Eligibility Requests for ''600 Series'' Items

The July 15 (framework) rule proposed a new paragraph (g) to § 740.20 in License Exception STA that identified the requirements and process that would be used by license applicants to request License Exception STA eligibility for ''600 series'' ''end items.'' The public comments regarding License Exception STA were generally favorable, but some commenters made suggestions for how the process could be improved or simplified for these requests.

Three commenters recommended that BIS allow applicants to submit License Exception STA eligibility requests either on their own or with an application for the export of the requested item. In the July 15 (framework) rule, BIS proposed that License Exception STA eligibility requests could only be submitted at the time of a license application to minimize the potential of a large number of submissions at one time. However, as the review of the USML Categories has been completed and the revised USML Categories and corresponding ''600 series'' ECCNs have been published in proposed form, BIS, along with the Departments of Defense and State, has determined that the universe of ''600 series'' ''end items'' that require a prior review from the U.S. Government should be limited to ECCNs 8A609.a (vessels), 0A606.a (vehicles), and 9A610.a (aircraft); only ECCN 9A610.a is included in this final rule

and BIS will create ECCNs 8A609.a and 0A606.a in future final rules. All other ''600 series'' ''end items'' will be automatically eligible for License Exception STA, although the exporter must still ensure that the item and other aspects of the transaction are not restricted under § 740.2 and the transaction meets the applicable terms and conditions of License Exception STA. There will nonetheless still be restrictions on the use of License Exception STA for various types of software and technology, as described below.

Given this much smaller universe of ''600 series'' ''end items'' that will require the submission of License Exception STA eligibility requests, BIS accepts the commenter's recommendation to allow the public to submit License Exception STA eligibility requests at any time and will no longer require such requests to be submitted at the time of a license application requesting authorization for an export, reexport, or transfer (in-country). However, to assist in the tracking and efficient interagency review of such requests, these License Exception STA eligibility requests must be submitted via the BIS Simplified Network Application Process—Redesign (SNAP–R) system unless BIS authorizes submission via the BIS–748–P Multipurpose Application form. Accordingly, this final rule revises § 748.1(d) to add License Exception STA eligibility requests to the list of applications that must be submitted via SNAP–R unless BIS authorizes paper submissions. In SNAP–R and on the BIS–748–P, a request for License Exception STA eligibility will be submitted as an export license application, but in the future these requests will be filed electronically as a separate work item type in SNAP–R. This will occur once the SNAP–R system is revised to accommodate STA eligibility requests as a separate work item type. These changes are limited to the process that will be used in SNAP–R for submitting License Exception STA eligibility requests. The types of information required to be submitted will be the same as that proposed in the July 15 (framework) rule.

Upon reflection, BIS has determined that the July 15 (framework) rule's proposal to list the ''600 series'' end items approved for STA in a newly proposed Supplement No. 4 to part 774 would be unduly complex. As noted above, the end items in only three ECCNs will require a specific determination to be eligible for License Exception STA. Given this small number, BIS believes that readers of the regulations will find it easier to identify the approved end items if they are listed in their respective ECCNs rather than in a separate supplement. Accordingly, such end items will be listed in the ECCNs under which they are classified. To avoid a break in the series of supplements to part 774, in this final rule, Supplement No. 4 to part 774 contains a description of the order of review of the CCL as discussed below.

This final rule also makes some conforming changes in Supplement No. 2 to part 748 (Unique Application and Submission Requirements) under the new paragraph (w) (License Exception STA eligibility requests for ''600 series'' end items) to conform to BIS's decision not to add a new Supplement No. 4 to part 774. This final rule revises the first three sentences of paragraph (w) to specify that to submit an STA eligibility request the applicant must mark an (X) in the ''Export'' box in Block 5 (Type of Application); mark an (X) in the ''Other'' box and insert the phrase ''STA request'' in Block 6 (Documents submitted with Application); and include the specific ''600 Series'' ECCN in Block 22 (ECCN). This final rule also removes the reference to Supplement No. 4 to part 774 and adds a reference to the ''600 series'' ECCN where such end items determined to be STA eligible through this new process would be identified on the CCL. Also to add greater specificity, this final rule uses the term ''end item'' for purposes of paragraph (w).

This rule also adds two sentences to paragraph (w) to clarify that if an applicant cannot provide some of the information described under paragraph (w), the U.S. Government will still evaluate the request. This new text also clarifies that the U.S. Government will use resources and information that may only be available to the U.S. Government in evaluating License Exception STA eligibility requests, as a way to encourage applicants that even if they feel that they may not have information in certain areas that the U.S. Government will also use its resources and expertise in evaluating these requests. However, this new text also clarifies that when submitting such requests applicants should provide as much information as they can based on the criteria noted in paragraph (w) to assist the U.S. Government in evaluating these License Exception STA eligibility requests. Lastly, for the changes to paragraph (w), this final rule is removing the term ''otherwise'' before the phrase ''or is available in countries that are not regime partners or close allies.'' The term otherwise was not needed to convey the intended meaning of the sentence, so BIS removed it.

One commenter recommended that the timeline for the review of License Exception STA eligibility requests should be similar to those set forth by § 740.17(b)(2) for ENC classifications, where a determination would be made thirty days after the submission of the request. BIS does not accept this recommendation because these ''STA requests'' are not the same as requests for ENC classification, which consists more of a technical review. The STA eligibility requests involve not only a technical review of the end item but also a broader policy review to determine whether such end items should be eligible for License Exception STA. These ''STA requests'' are not part of a license application requesting an authorization for an export, reexport or in-country transfer. However, BIS has determined using the timelines set forth in Executive Order 12981 and § 750.4, as was proposed in the July 15 (framework) rule, is the best approach to establish clear guidelines for the timeline for the interagency reviews conducted by the Departments of Commerce, State and Defense.

One commenter requested ''ECCN entry'' be changed to ''end item'' in § 740.20(g)(5)(i) because BIS is not making the entire ECCN eligible, but only a specific end item. BIS does not accept this change because in certain cases BIS may approve an ECCN entry for License Exception STA eligibility, but in other cases the end item approved for STA eligibility may be more narrowly defined. Therefore, BIS is not changing the ''ECCN entry'' as requested, but is adding ''or end item'' to add greater specificity. This will clarify that when BIS publishes final rules adding License Exception STA eligibility to the EAR for ''600 series'' end items, it may be done at the higher (i.e., more general description) ECCN level or specific end item level (e.g., a specific model number).

Two other commenters requested BIS allow the STA eligibility requests to cover the entire ECCN subject to the request versus the specific end item in the request. BIS is not making the requested changes. As noted, the STA eligibility requests are not limited to a specific model and can be requested at the ECCN level or ECCN ''items'' paragraph level. However, BIS anticipates that initially the end items that are determined to be eligible for License Exception STA under the § 740.20(g) process will likely be at the specific end item level. Over time as the U.S. Government has an opportunity to review more of these requests, it may be

possible that broader descriptions can be developed and authorized for License Exception STA. However, to protect U.S. national security interests a review of the end items classified in ECCN 9A610.a must be made by the U.S. Government prior to any of those end items being determined to be eligible for License Exception STA.

Two commenters requested BIS provide applicants with an opportunity to participate in unclassified interagency discussions on their License Exception STA eligibility requests similar to the opportunity to participate in open sessions of interagency discussions associated with the interagency licensing review process. BIS does not need to make any regulatory changes to address this comment. Requesters who submit ''STA requests'' under § 740.20(g) are participating in the review process in an important way. Therefore, such requesters are encouraged to submit any information that they believe would be relevant to the U.S. Government review of the License Exception STA eligibility requests. In reviewing and evaluating such requests, if BIS or one of the other departments has a question regarding what was submitted, a representative from BIS will likely contact the applicant through SNAP–R to request an answer to the specific question or request additional information. This process is similar to the typical level of applicant participation that occurs in the license application review process, so BIS is not making any additional changes to the EAR or internal license review processes of the U.S. Government to create a greater role for the applicant in the interagency review process for License Exception STA eligibility requests.

One commenter requested BIS allow an extension of the review period for STA eligibility if agreed to by the applicant. This commenter suggested this could be implemented in § 750.4(f) (Procedures for processing license applications) by allowing for an additional review period of 10 calendar days, with an extension if agreed to by the applicant. BIS is not accepting this change because the License Exception STA eligibility requests and the license applications requesting an authorization for an export, reexport or in-country transfer are no longer going to be linked in this final rule, so the concern with the License Exception STA timeline interfering with the timeline for the review of the license application is no longer an issue.

One commenter thought it would be useful to provide further clarity on the proposed ''STA eligibility'' review process, and its precise relationship to the ACEP licensing process. If it is the intent to review STA eligibility requests in tandem with the ACEP licensing review process, this commenter is concerned whether such a review would provide adequate administrative due process. As noted above, the License Exception STA eligibility requests will not be reviewed in tandem with the license application review process, so this concern is already addressed. In addition, as described in § 740.20(g), in the event that STA eligibility is denied, exporters are able to seek reconsideration of the denial and are encouraged to provide any additional information supporting their request. Further, a denial of STA eligibility does not preclude an exporter from applying for a license for the same export.

One commenter requested that BIS mandate applicants who receive a notification from BIS authorizing the use of License Exception STA for specific end items to share such determinations with other parties. BIS does not accept this change. Applicants who receive an approval may share that notification, but BIS does not believe that mandating that party to share the notification received from BIS is warranted. BIS will communicate such determinations based on an amendment to the EAR as described in § 740.20(g)(5)(i). BIS believes this combination of a voluntary sharing approach followed by a regulatory change to inform the public is the best approach.

2. License Application for a ''600 Series'' Item That Is Equivalent to a Transaction Previously Approved Under a State License or Other Approval

This final rule is making changes to Supplements Nos. 1 (Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions) and 2 (Unique Application and Submission Requirements) to part 748 to allow for the consideration of previous State licenses or other approvals that are equivalent to a new license application for a ''600 series'' item. These changes are being made to address a comment regarding how previous ITAR licenses or other approvals could be considered as part of the EAR license review process. Other changes included in this final rule address the use of ITAR licenses and other approvals that remain valid (see Section III.C above).

One comment requested BIS create an ID code in SNAP–R to automatically convert ITAR agreements to BIS licenses. Another commenter suggested implementing an amendment capability as it relates to licenses. BIS does not accept the suggested change to create an ID code in SNAP–R that would allow applicants for ''600 series'' items to automatically transfer previous ITAR agreements (e.g., MLA or TAA) to a BIS license because of technical limitations in the SNAP–R and the importance of reviewing these new proposed exports, reexports, and transfers (in-country) that will be made under the EAR licenses being applied for at the time of the new applications.

However, BIS does agree that an export, reexport or in-country transfer previously authorized under an ITAR license or other approval (e.g., MLA or TAA) may be relevant to the review of a subsequent EAR license application if the transaction in question is equivalent to the transaction previously authorized. Therefore, BIS is making a change that was not proposed previously in the July 15 (framework) rule to revise the license application process to provide guidance to applicants on how to have a previous State license or other authority be considered as part of the license review process for a ''600 series'' item.

To implement this change, BIS is revising the instruction in Supplement No. 1 to part 748 (BIS–748P, BIS–748P–A: Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions) to create a process in SNAP–R for applicants to input a State license or other approval number in Block 24. The ITAR license or other approval number will alert BIS and the other U.S. Government agencies reviewing a particular ''600 series'' application that the new application is equivalent to a previous State license or other approval.

Only those license applications where the particulars (e.g., the description of the item, the purchaser, ultimate consignee and end-user(s)) are the same in both the EAR license application and the previously issued ITAR authorization, will receive full consideration under this paragraph. In some instances, review under this paragraph may result in a quicker processing time. The State license number or other identifier, such as a MLA or TAA identifier, must be included in Block 24 of the BIS license application, as noted above. Lastly, this final rule is adding a Note to paragraph (x) to clarify license applications submitted under paragraph (x) will still be reviewed on their own merits and in accordance with license review procedures and timelines identified in part 750.

BIS agrees with the second commenter who suggested an amendment capability for licenses

would improve the efficiency of the EAR licensing process as the current EAR does not allow for amendments to licenses. Amendments to licenses are addressed with the submission of a replacement license when a change needs to be made to a previously authorized license for a change not described in § 750.7(c) in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR, Block 11. At this time, BIS is not able to implement a process in this final rule to allow for amending of existing EAR licenses. However, BIS intends to reconsider this idea once the single licensing form is developed and the export control IT system has greater flexibility to address such changes, including creating an efficient process for allowing license holders to submit such requests for changes to a license and allowing for identification and efficient tracking of such changes. These types of improvements in the IT system will better ensure relevant U.S. Government enforcement officials can identify such approved changes to verify compliance with approved amended licenses.

XVII. Part 750—Application Processing, Issuance, and Denial

In the June 21 (transition) rule, BIS proposed revising § 750.4 to address Congressional notification for the export of ''600 Series Major Defense Equipment'' and revising § 750.7 to extend the validity period of BIS licenses and permit shipment to and among multiple end users. These proposals, public comments thereto, and final decisions are discussed in more detail below.

A. Calculating Processing Times

As proposed in the June 21 (transition) rule, this rule amends § 750.4(b) to add the congressional notification process associated with requests to export ''600 Series Major Defense Equipment'' to the list of actions not included in license application processing time calculations.

B. Shipment to Approved End Users

BIS licenses generally designate one ultimate consignee and may have many designated end users. DDTC authorizations may designate multiple foreign end users. The June 21 (transition) rule proposed to revise § 750.7(c) explicitly to allow direct shipments to approved end users on an export or reexport license if those end users are listed by name and location on such license. BIS received no comments that directly referred to this proposed revision, but one commenter expressed concern that EAR licenses would afford less flexibility than ITAR agreements, which may allow shipments *among* approved end users outside the United States in addition to direct shipment to approved end users from the United States. BIS acknowledges that this is a valid concern; therefore, this rule amends proposed § 750.7(c)(1)(ix) by allowing direct export, reexport and transfer (in-country) to *and among* approved end users provided they are listed by name and location on such license and that the license does not contain any conditions that cannot be complied with by the end user, and by removing a proposed restriction on exports and reexports to unlisted end users. This rule also makes conforming changes to § 758.5.

C. Extended Validity

Current ITAR licenses are generally valid for four years. Agreements under the ITAR may be valid as long as ten years. Prior to the effective date of this rule, BIS licenses were generally valid for two years. In order to harmonize the EAR with the ITAR, the June 21 (transition) rule proposed to revise § 750.7(g) to extend the validity period of BIS licenses issued hereafter from two years to four years, with some exceptions, unless otherwise specified on the license.

Three commenters expressed support for this extension, and none expressed opposition to it. However, one commenter suggested a default ten-year validity period for replacing an ITAR agreement. BIS does not accept the suggested revision, but BIS notes that exporters may request an extended validity period pursuant to § 750.7(g)(1) beyond four years. Such requests will be reviewed on a case-by-case basis. Grounds for requesting extension would include having had agreements on similar matters previously approved by the Department of State for a longer period. BIS believes that setting up a new process for a default validity period would restrict the flexibility of the reviewing agencies without significantly lessening the burden on the applicant, as the same information would have to be supplied under a default process as will be required for a license application and request for extended validity.

D. Specificity on Application

Three commenters asserted that BIS's proposed licensing process is more burdensome than DDTC licensing because the ITAR allows identifying general categories rather than parsing out each part covered by an application. BIS believes that most general categories of items transitioning from the USML will fall into general categories in the EAR as well, such as the .x paragraphs of the ''600 series'' ECCNs. Therefore, the burden should be comparable. For example, if a collection of parts specially designed for a military aircraft were formerly controlled under USML Category VIII(h) and were not identified in the revised USML Category VIII(h), then they would be controlled under ECCN 9A610.x. BIS does not and would not generally expect more detail on a BIS license application in this regard than what DDTC would generally expect on one of its license applications.

XVIII. Part 756—Appeals

This final rule adopts the position described in the July 15 (framework) rule that STA eligibility decisions cannot be appealed through part 756. BIS is maintaining this position for the reasons set forth in that rule, i.e., that the decision to grant STA eligibility is a foreign policy determination and because consensus is required among the considering agencies to do so. In addition, exporters should keep in mind that a denial of STA eligibility does not preclude the exporter from submitting a license application for the same transaction. This rule amends the regulatory text proposed in the July 15 (framework) rule to remove ambiguity about its scope.

XIX. Part 758—Export Clearance Requirements

A. AES Filing Regardless of Value, Except for .y Items

The June 21 (transition) rule proposed to revise § 758.1 to require that information on all exports of ''600 series'' items be filed in AES regardless of value or destination. Six commenters opposed this requirement. They cited difficulties in separating ''600 series'' items from other CCL items in their internal systems, and stated that applying different clearance requirements for items eligible for the same license exceptions was confusing. BIS did not accept these suggestions. Due to the nature of ''600 series'' items as items specially designed for military applications or end items, the U.S. Government needs to retain a degree of visibility into the movement of these items. This final rule adopts the amendment to § 758.1 from the proposed rule, except with respect to .y items, which is discussed further below.

Three commenters requested that .y items not be subject to as stringent requirements. BIS agrees, given the lesser military significance of .y items. To lessen the AES requirements on .y

items, BIS has removed .y items from the mandate to file in AES for all exports. Thus, the AES filing requirement for .y items would be the same for all other AT-only controlled items on the CCL.

The June 21 (transition) rule proposed to revise § 758.1 to require AES filing for all exports under License Exception Strategic Trade Authorization (STA), regardless of value, to enable the U.S. Government to obtain information about low-value shipments of these items. That rule also proposed to revise § 758.2 to preclude the option of post-departure filing for exports of ''600 series'' items because this option is not permitted for ITAR-controlled exports now, and the rule proposed removing the option of post-departure filing for License Exception STA and Authorization VEU because the nature of these authorizations requires pre-departure filing of this information to ensure compliance with their terms and conditions. These proposals are adopted in this final rule.

B. Furnishing of ECCNs to Consignees

Section 758.6 requires that exports of items on the CCL be accompanied by a Destination Control Statement (DCS) identifying the items as subject to the EAR. Given the nature of the ''600 series'' items and requirements related to them, additional information identifying ''600 series'' items is necessary. The June 21 (transition) rule proposed to revise § 758.6 to require a more specific DCS for ''600 series'' items, which would require exporters to identify in the text of the DCS the ECCNs of all ''600 series'' items being exported to ensure that consignees are aware that they are participating in a transaction that includes such items.

BIS received comments on this proposal requesting that BIS not change the DCS, as it is pre-printed on certain export control documents, so tailoring it to different shipments is burdensome. Taking these views into account, but in continued recognition of the need to identify ''600 series'' items to consignees and national authorities, BIS has revised § 758.6 to require that the ECCN for each ''600 series'' item being shipped be provided on the same documents on which the DCS is required, but not in the text of the DCS itself. This rule requires that the ECCN for each ''600 series'' item must be entered on the invoice and on the bill of lading, air waybill, or another export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad. This final rule does not change the text of the DCS requirement; it merely adds a new ''[g]eneral requirement'' heading to the previously existing requirement.

BIS received one comment that requested that BIS require the ECCN for all items, not just ''600 series'' items, in the DCS to assist foreign parties in classification. BIS recognizes the value to foreign parties of requiring exporters to furnish the ECCN for all items shipped. However, this rule's purpose is to revise the EAR to allow the transition of the ''600 series'' from the ITAR to the EAR. Therefore, BIS does not accept this recommendation as it is outside the scope of this final rule. BIS does, however, urge exporters to advise foreign parties to the transaction of the ECCNs of all exported items.

BIS received eight comments requesting that it not require the inclusion of the ECCN for ''600 series'' items in the DCS. These commenters argued that there would be substantial burden in revising their information technology (IT) and compliance systems to insert the ECCN into the DCS and further burden in maintaining a separate DCS for ''600 series'' items. Consistent with the discussion above, BIS agrees with commenters that the burden of including ECCNs in the DCS paragraph outweighs the value of notifying national authorities, consignees, and other parties of ECCNs via that statement. Therefore, BIS has determined that the ECCN must be included on the export control documents in a manner that will allow national authorities, consignees, and others who review those documents to quickly and easily determine the ECCN of each ''600 series'' item in a shipment, but will not require changes to the DCS paragraph. This will alert those interested parties to the export control classification of the ''600 series'' items and facilitate their determination of what controls are applicable to the particular ''600 series'' items. Allowing exporters flexibility in the placement of the ECCNs on the documents will allow each exporter to minimize the regulatory burden by adopting practices that fit most easily with its systems while helping to protect U.S. national security interests.

Two commenters noted that the ECCN is already included in most export control documents, so inclusion in the DCS was unnecessary. BIS accepts this recommendation to the extent that it suggested that the ECCN requirement be removed from the DCS paragraph and applied to ''export control documents'' more generally and notes that exporters will have flexibility as to how to include the ECCN on ''export control documents.'' This flexibility should minimize the impact of this requirement for those exporters that already include the ECCN on their export control documents.

Five commenters suggested that BIS substitute written notification to consignees of 600-series status as a condition of license exception use. BIS does not accept this recommendation. License Exception STA already requires written notification of the ECCN as a condition of use, and this requirement will continue to apply with the addition of the ''600 series'' items to the CCL. Inclusion of the ECCN on the export control documents is desirable because it provides notice of the ECCN to parties in addition to the Ultimate Consignee, including freight forwarders and national authorities. It also assists U.S. Customs and Border Protection agents with an opportunity to conduct compliance checks to ensure that the information on the export control documents matches the electronic export information in AES.

One commenter suggested requiring the ECCN in the business agreements, such as contracts, that the parties enter into in connection with an export transaction. BIS does not accept this suggestion. While this may represent a good compliance practice, BIS does not deem it appropriate to dictate what terms must be included in the parties' commercial agreements. BIS does not generally see the agreements, and they do not travel with the items during shipment. As noted above, several of the goals served by the inclusion of the ECCN on the ''export control documents'' are served by the fact that the documents travel with the items.

One commenter stated that including the ECCN in the DCS would not raise awareness by foreign parties of the need for compliance with US export controls. BIS does not agree with this comment. Including the ECCN on the ''export control documents'' will increase the ability of foreign parties and national authorities to determine the relevant export controls. Additionally, requiring exporters and reexporters provide the ECCN is intended to improve compliance by ensuring that recipients of the items have a basis for determining license requirements.

C. Removal of Obsolete References in Revised Text

In part 758, this rule removes references in revised text to the Shipper's Export Declaration or SED, because this form no longer exists.

XX. Part 762—Recordkeeping

The July 15 (framework) rule and the June 21 (transition) rule both proposed

revising § 762.2 to reference new recordkeeping requirements. The July 15 (framework) rule proposed to add references to § 743.4, for Conventional Arms Reporting, and § 740.20(g), for License Exception STA eligibility requests for ''600 series'' end items. Descriptions of the underlying requirements are found in Sections XIII.A and XVI.B.1 above, respectively. As described in Section XI.F above, the June 21 (transition) rule proposed to add a requirement to § 740.20, note to paragraph (c)(1), that parties abroad must have been identified on a license or other approval issued by either BIS or DDTC prior to receiving ''600 series'' items under License Exception STA; this rule adds paragraph (b)(51) to conform to that requirement. The June 21 (transition) rule also proposed to add references to § 740.11(b)(2)(iii) and (iv) (as described in Section XI.D of this rule), for exports made for or on behalf of a department or agency of the U.S. Government or at the direction of the Department of Defense. This rule adopts the proposed revisions to four paragraphs in § 762.2 to reference the additional records to be maintained in §§ 743.4, 740.20(g), and 740.11(b)(2)(iii) and (iv) and adds a reference to the existing recordkeeping requirement in § 740.9(a)(3), for temporary exports of technology. Lastly, the rule adds two new paragraphs to reference the ''specially designed'' definition in § 772.2 (described below in Section XXIII) and a note to paragraph (c)(1) of § 740.20 of the EAR (described below in Section XXIV.C.5).

BIS received two comments related to the recordkeeping references in response to the July 15 (framework) rule. One comment states that the addition of the reference to § 743.4, for Conventional Arms Reporting, is premature, because no items are currently subject to the reporting requirement. BIS does not accept this recommendation. This rule provides the framework for the ''600 series'' within the EAR. It creates a reporting requirement for items listed on the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Therefore, a reference to that reporting requirement in § 762.2 (Records to be retained) is appropriate. One comment states that the government should not depend on the recipients of its responses to License Exception STA eligibility requests to maintain records of those responses. BIS notes that although responses are transmitted through SNAP–R, SNAP–R is not intended to be a recordkeeping archive. Therefore, BIS does not accept this recommendation, and this final rule will require that any person who submits a License Exception STA eligibility request to maintain records of such a request in accordance with the new provisions added to part 762.

Lastly, as a result of proposals made in the June 19 (specially designed) rule, in this final rule, BIS is adding a new paragraph (b)(50) to § 762.2 as a conforming change to notify the public that if they rely on the paragraph (b)(4), (b)(5), or (b)(6) exclusions of the ''specially designed'' definition that the documentation related to such release must be retained in accordance with part 762 (Recordkeeping) of the EAR. One public comment in response to the June 19 (specially designed) rule raised concern that the documentation requirements referenced in the note to paragraphs (b)(4) and (b)(5) could be overlooked and suggested BIS add a reference to § 762.2. BIS agreed with the commenter's suggestion and is adding this change to the final rule, along with other changes to the recordkeeping requirements referenced above. As described in more detail below in Section XXIII.A, paragraph (b)(6) is a new ''development'' based exclusion that is being added to the definition of ''specially designed'' in this final rule. Because the paragraph (b)(6) exclusion is also a ''development'' based exclusion similar to (b)(4) and (b)(5) that includes the same types of documentation requirements, BIS is also adding a reference to paragraph (b)(6) to § 762.2 in this final rule.

XXI. Part 764—Foreign-Produced Direct Products and Denial Orders

Because of the expansion of the provisions at § 736.2(b)(3) to include ''600 series'' items, the June 21 (transition) rule proposed to remove the penultimate paragraph in Supplement No. 1 to part 764. That penultimate paragraph states that the standard denial order ''does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.'' One commenter objected to removing this paragraph on the grounds that foreign parties may be unaware that their foreign-made items are subject to the EAR. BIS does not agree with the commenter's concern. Under General Prohibition 4 of the EAR, § 736.2(b)(4), a party is responsible for ensuring that its transactions involving a denied person do not violate the terms of the applicable denial order. BIS also notes that the current standard denial order includes foreign-made items containing above a *de minimis* level of U.S. content. In transactions involving a denied person, foreign parties thus already need to determine whether foreign-made items are subject to the EAR. This rule adopts the provision as it was proposed.

XXII. Part 770—Interpretations

The November 7 (aircraft) rule proposed to remove Interpretation 9 from part 770. As discussed below, paragraph (b)(3) of the ''specially designed'' definition being revised in this final rule is intended to capture the scope of Section 17(c) of the Export Administration Act of 1979, as implemented in the note to USML Category VIII(h) and Interpretation 9 to part 770 of the EAR, and apply it to the remainder of the USML and CCL. This means that any part, component, accessory, or attachment that was specifically designed or modified for a military aircraft but that would not be controlled under USML Category VIII(h) as a result of the note to USML Category VIII, would not be controlled by ECCN 9A610.x which controls such items if ''specially designed'' for a military aircraft and not elsewhere enumerated. Therefore, Interpretation 9 is no longer needed in the EAR and is being removed in this final rule.

This final rule is also removing Interpretation 10 from part 770. This revision was not previously proposed, but the interpretation's description of differing Commerce and State jurisdiction is out of date and no longer accurate and conflicts with the structural changes adopted in this final rule. Therefore, the interpretation is removed as a conforming change.

XXIII. Part 772—Definitions (Including Specially Designed)

A. ''Specially Designed'' Definition

In conjunction with the Department of State, BIS published a proposed definition of ''specially designed'' on June 19, 2012 (77 FR 36409). The definition proposed in that rule took into account public comments received in response to an earlier proposed definition in the July 15 (framework) rule, and would create, insofar as practicable, a common definition of ''specially designed'' for use under the CCL and the USML. As seen in the July 15 (framework) rule, the definition of ''specially designed'' proposed in the June 19 (specially designed) rule adopted a *catch and release* approach because the agencies found that it was easier to describe what the term did not or should not include rather than what it does include. Thus, paragraph (a) of the definition proposed in the June 19

(specially designed) rule contained three broad bases for items to be ''specially designed''—the *catch.* If an item were caught by at least one of the three bases in paragraph (a), then paragraph (b) contained five exceptions to that item's being ''specially designed''—the *release.*

The *catch-and-release* construct must be robust enough to capture all items that may warrant being controlled as ''specially designed.'' In order to protect U.S. national security interests, the paragraph (a) *catch* must be broad in scope. If paragraph (a) overreaches in certain cases, that can be tolerated to some degree, but as much as possible paragraph (b) of the definition tries to *release* those ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ''software'' that do not warrant being treated as ''specially designed.'' However, it is important for protecting U.S. national security interests that only those ''parts,'' ''components, ''accessories,'' ''attachments,'' and ''software'' that the U.S. Government has determined in all cases do not warrant being controlled as ''specially designed'' are *released* under paragraph (b). BIS received 31 comments in response to the proposed definition of ''specially designed'' contained in the June 19 rule. Most commenters felt the proposed definition in the June 19 rule was a significant improvement over the July 15 (framework) rule proposal, but many expressed concerns about complexity, ambiguity of some of the terms used, and treatment of items that have undergone minor modifications in form or fit (more specific description of these comments and BIS's responses to them are addressed further herein). One commenter asserted that BIS should have prepared a regulatory flexibility analysis of the effect of the proposed definition instead of having Commerce's Chief Counsel for Regulations certify that the change would not have a significant impact on a substantial number of small entities, but this assertion was not supported by any specific information on the economic impact of adopting the proposed definition. BIS continues to believe that defining the term ''specially designed'' in the EAR, rather than leaving it undefined outside the MTCR context, helps all businesses by reducing uncertainty about how to classify their items. Small and medium-sized exporters who may not have export counsel or the resources available to obtain such assistance are less likely to need assistance to comply with a defined term than an undefined term. In addition, some commenters argued that a ''natural'' definition for the term already exists and that establishing a regulatory definition that would apply to all uses of ''specially designed'' needlessly complicates a ''straightforward'' and ''easily-understood'' term. From extensive reviews of license applications, discussions with BIS's Technical Advisory Committee members, and the diverse comments received from the public, BIS has concluded that organizations within similar industries have been and are continuing to apply wide-ranging interpretations of ''specially designed.'' Some organizations have obtained commodity jurisdiction (CJ) determinations from the Department of State for a specific item and have then extrapolated the determination to similar items across multiple product lines despite potential differences in fact patterns, while others have limited the scope of CJs from applying to other product lines. They have applied the lessons learned from such cases to their application of ''specially designed.''

Some organizations have applied the Missile Technology Control Regime (MTCR) definition of ''specially designed'' to all of their items, while other organizations have limited the applicability of the MTCR definition to items controlled for MT reasons only. Still other organizations have interpreted the text of § 120.3(a)(ii) of the ITAR to mean that if an item has any performance equivalent to a non-controlled item, even if some modification has been made that differentiates the item from a non-controlled item, then the item at issue is not subject to the ITAR or, by implication, caught under the ''specially designed'' description of an ECCN. Some have made this interpretation despite the parenthetical in § 120.3(a)(ii) describing performance equivalent as ''defined by form, fit *and* function'' (emphasis added). On the other hand, many organizations treat any item that has been slightly modified in fit or form for a controlled item as ''specially designed,'' even if the modifications made are insignificant.

Two public comments even raised meeting minutes from a 1975 meeting of the Coordinating Committee on Export Controls (COCOM), which helps demonstrate the length of time for which the interpretation of ''specially designed'' has been an issue. These commenters referred to these 1975 meeting minutes to support their position that an exclusive use based interpretation of ''specially designed'' is warranted. However, given COCOM ceased to exist on March 31, 1994, the minutes are not instructive for purposes of this final definition of ''specially designed.'' In addition, as identified in the June 19 (specially designed) rule, a single definition based on exclusive use would not be adequate to protect U.S. national security interests or to account for the variety of ways in which the term ''specially designed'' is used under the EAR.

It is clear to BIS and other agencies involved in export controls that there is no ''natural'' definition or interpretation of ''specially designed,'' and that this has led to competitive disparities for similarly situated organizations. Consequently, a single regulatory definition of ''specially designed'' is warranted. A single regulatory definition is the only way in which to adequately address the various and inconsistent interpretations of the term that are discussed above and is the clearest path for protecting U.S. national security interests and ensuring the U.S. Government is meeting its multilateral regime commitments. The United States has national discretion to establish a definition that is consistent with multilateral regime commitments, and this definition meets that requirement. However, while finalizing a definition of ''specially designed'' with this rule, BIS and its interagency partners share the goal of reducing the use of ''specially designed'' to describe controlled items and intend to work to do so through the multilateral regimes and through the Advanced Notice of Proposed Rulemaking published on June 19, 2012 (77 FR 36419) (''June 19 ANPRM''), which is one of the first steps in that process.

The public comment period closed on the June 19 ANPRM on September 17, 2012. BIS received four comments in response to the ANPRM. Two public commenters noted the challenges and difficulties that would arise in trying to enumerate all of the components that would warrant control as ''specially designed'' components. Both commenters also noted that given the progress that has already been made in developing a suitable definition of ''specially designed'' under ECR, it is preferable to continue with the track of adopting a single ''specially designed'' definition for use under the EAR and the ITAR, informed by the public comments received in response to the June 19 (specially designed) rule.

The other two commenters were more optimistic about the feasibility of enumerating ''specially designed'' components. The third commenter in particular made a number of suggestions for how the ''specially designed'' components controlled in Category 5—

Part II (''Information Security'') could be enumerated, which BIS is still evaluating. The fourth commenter was quite supportive of the concept of enumerating ''specially designed'' components, but did not provide specific examples for how to describe the enumerated components, except to restate a comment that this commenter also submitted in response to the June 19 (specially designed) rule, which was to use the term ''required'' in place of ''specially designed.''

As noted above, BIS and its interagency partners will continue to evaluate these comments and, consistent with the goal of ECR of trying to make the control lists as ''positive'' as possible, will continue to evaluate where ''components'' can be enumerated on the CCL and the USML and, where possible, to enumerate such ''components.'' However, the limited response to the June 19 ANPRM and the two commenters who specifically indicated the challenges and difficulties they perceived in relying on such an approach to enumerating ''specially designed'' ''components'' further reinforces BIS's assessment regarding the need for the use of the term ''specially designed'' in particular under the .x and .y paragraphs that will play such an important role in the ''600 series'' being added to the CCL, in addition to the other uses of ''specially designed'' on the CCL outside of the ''600 series.''

These comments also further reinforce BIS's assessment that the ''specially designed'' definition included in this final rule, which was further refined based on the comments received in response to the June 19 (specially designed) rule, would make a significant step forward toward resolving this long-standing issue under U.S. export controls. BIS believes adopting this definition of ''specially designed'' is the most feasible approach to defining the controls for ''specially designed'' ''components'' in the vast majority of cases on the CCL where ''specially designed'' is used as part of the control parameter. However, BIS will continue to evaluate the comments received in response to the June 19 ANPRM and where feasible develop proposals for enumerating or describing certain ''components'' on the CCL.

The Departments of Defense, State, Commerce, Homeland Security, and Justice reviewed all comments in preparing the ''specially designed'' definition for this final rule. BIS understands that this implementation will change, and possibly increase, the number of items previously treated as ''specially designed;'' and thus controlled items. Adopting the definition in this rule is, however, necessary to eliminate the various and inconsistent interpretations, establish a level playing field for organizations, and appropriately reflect the national security and foreign policy concerns of the United States. In addition, the possible increase would likely be for those organizations noted above that were interpreting ''specially designed'' based on misperceptions of the perceived ''natural'' meaning of ''specially designed,'' which likely were not consistent with U.S. law and policy in regards to how the U.S. Government has interpreted ''specially designed.'' In certain cases, the public may have relied on U.S. Government interpretations for what was not ''specially designed'' through the CJ or commodity classification automated tracking system (CCATS) processes and for these items determined not to be ''specially designed,'' the final definition includes changes to preserve those legacy determinations made through previous CJs and CCATS under certain limitations. A discussion of the comments and changes made to the June 19 (specially designed) rule are addressed below.

1. Introductory Text to the Definition of ''Specially Designed''

The June 19 proposed definition included introductory text that outlined the sequential analysis that would be followed in evaluating the ''specially designed'' definition. Several commenters that supported the definition indicated the linear process outlined for reviewing the definition was helpful and an improvement. These commenters agreed the structure of the definition would lend itself to a decision tree process where the public could answer a series of yes/no questions that would ultimately result in a consistent interpretation regarding what is and what is not ''specially designed.'' Going off this theme, some commenters also suggested developing formal decision trees and other regulatory guidance to assist the public in understanding and applying the ''specially designed'' definition. Other commenters suggested simplifying some of the introductory text because it was redundant with other portions of the definition.

BIS addressed these comments by significantly simplifying (and thus expanding) the introductory text to the definition. The introductory text in the ''specially designed'' definition in this final rule simply states that when applying this definition, follow the sequential analysis set forth in the definition. However, to address those commenters who thought additional guidance would be helpful, the introductory text will now include a cross reference to direct the public for additional guidance on the order of review of ''specially designed,'' including how the review of the term relates to the larger CCL in a new Supplement No. 4 to part 774—Commerce Control List Order of Review, that is also being implemented in this final rule.

BIS created Supplement No. 4 to part 774 to allow for more detail to be provided regarding the steps to be followed in applying the ''specially designed'' definition and also how and when the public should review the ''specially designed'' definition in the larger review of the CCL. BIS added this guidance as a new supplement to part 774 because other supplements, such as Supplements No. 2 and No. 3 also provide guidance on interpreting the CCL. BIS's decision to add this new Supplement No. 4 also took into account the widespread use of ''specially designed'' on the CCL and in the new ''600 series'' in deciding that additional guidance is warranted on the appropriate order of review. In addition to the new supplement, BIS is also developing outreach materials to be used on the BIS Web site and outreach seminars to further public understanding of the ''specially designed'' definition added to the EAR in this final rule, along with the larger order of review for the CCL. The ''specially designed'' definition will play a key role in ECR. BIS and DDTC are committed to ensuring the public will have the necessary support and training materials available through the targeted outreach program BIS and State are developing to ensure the public is able to understand and use the new ''specially designed'' definition effectively.

2. Paragraph (a)—Identifying ''Specially Designed'' Items

Under the ''catch'' provisions of the proposed June 19 definition, one must determine if, as a result of ''development'' activities, an item meets the scope of any one of paragraphs (a)(1), (a)(2), or (a)(3). Under paragraph (a)(1), an item is caught if, as a result of ''development,'' it has properties ''peculiarly responsible for'' achieving or exceeding the performance levels, characteristics, or functions described in the relevant ECCN or USML paragraph. Paragraph (a)(1) would apply to all commodities, including materials, as well as software; the paragraph does not, however, generally apply to

technology. Controlled technology is generally identified by the already-defined term ''required'' and the General Technology Note in Supplement No. 2 to part 774 rather than the term ''specially designed.'' The scope of items controlled under paragraphs (a)(2) and (a)(3) would be more limited, but the scope of control arguably would be broader than paragraph (a)(1). Under paragraph (a)(2), a ''part'' or ''component'' would be caught if, as a result of ''development,'' it is necessary for an enumerated or referenced commodity or defense article to function as designed. Under paragraph (a)(3), an accessory or attachment would be caught if, as a result of ''development,'' it would be used with an enumerated or referenced commodity or defense article to enhance its usefulness or effectiveness.

In response to paragraph (a), commenters were generally supportive of the ''peculiarly responsible'' standard in paragraph (a)(1), and some commenters advocated using this same standard in paragraph (a)(2). Other commenters recommended inserting text that paragraph (a)(2) only applies to ''application specific'' ''parts'' and ''components'' or those having the performance levels that are the bases for control. Also, one commenter supported the MTCR's ''exclusive use'' standard to be used for all ''specially designed'' references, regardless of whether MT controls are implicated. Another commenter recommended creating an AT control only for components subject to a catch-all control. BIS does not accept these recommendations as they are inadequate to protect U.S. national security interests or to account for the variety of ways in which the term ''specially designed'' is used under the EAR.

For purposes of determining when a ''part'' or ''component'' is ''specially designed,'' an item may be controlled for reasons other than the level of technical sophistication or contribution to enabling a component or end item to reach the parameters identified in an ECCN or USML paragraph. For example, a particular ''part'' may not be considered sophisticated in and of itself, but it may be essential to the repair or continued operation of a ''component'' or ''end item'' that is technically sophisticated or described on the CCL or USML. BIS believes that it is necessary to extend the ''catch'' of the ''specially designed'' definition to reach these less sophisticated ''parts'' or ''components'' that warrant control for national security or foreign policy reasons. In addition, BIS believes that a peculiarly responsible standard solely used to determine what ''parts'' and ''components'' are ''caught'' under ''specially designed'' would present too much room for subjectivity in terms of when a ''part'' or ''component'' would meet the peculiarly responsible standard.

BIS needs a definition that is clear and objective such that if ten people were provided with the same set of facts, they would consistently make the same determination whether a ''part'' or ''component'' was ''caught'' under ''specially designed.'' The peculiarly responsible standard is a good indicator for what is special and warrants control under ''specially designed'' which is why the (a)(1) criterion is included in this final rule. However, the peculiarly responsible standard should not be the sole criterion for what ''parts,'' ''components,'' ''accessories,'' ''attachments'' or ''software'' would be ''caught'' under ''specially designed.'' Because of its utility in identifying ''specially designed'' items, in particular for end items and material, BIS has maintained the ''peculiarly responsible'' standard in proposed paragraph (a)(1) and only made minor conforming edits to (a)(1) based on other changes described further below.

Additional commenters requested clarification, with respect to paragraph (a)(2), on interpreting the terms ''necessary'' and ''to function as designed.'' For example, commenters questioned whether anti-lock brake systems or airbag systems modified for vehicles in USML Category VII would be necessary for the vehicles to function as designed. Similarly, some commenters presented concerns for determining when an accessory or attachment enhances the usefulness or effectiveness under paragraph (a)(3), while other commenters stated that the text in (a)(3) would simply repeat the definition of ''accessory'' and ''attachment.'' To address these concerns, one commenter recommended that paragraph (a)(3) be removed and that paragraph (a)(2) be revised to read as follows: ''is a 'part,' 'component,' 'accessory,' or 'attachment' used in or with commodities enumerated on the CCL or the USML.''

BIS agrees that the wording proposed in paragraph (a)(2) presents ambiguity for fact patterns like the two items described above. BIS also concurs that paragraph (a)(3) unnecessarily repeats text from already-defined terms. Consequently, with this final rule, BIS is eliminating paragraph (a)(3) and moving ''accessories'' and ''attachments'' to a revised paragraph (a)(2), that catches ''parts,'' ''components,'' ''accessories,'' ''attachments'' or ''software'' ''for use in or with a commodity or defense article enumerated or otherwise described on the CCL or the USML.'' BIS believes that this change enhances clarity and furthers the intent of paragraph (a)(2), and the proposed (but now eliminated) paragraph (a)(3), to be a broad ''catch.'' This simplified approach will catch any ''part,'' ''component,'' ''accessory,'' ''attachment'' or ''software'' that is in any way for use in or with (regardless of the perceived insignificance) a commodity or defense article enumerated or otherwise described on the CCL or USML. While this change will result in more ''parts,'' ''components,'' ''accessories,'' ''attachments'' and ''software'' being caught under paragraph (a)(2) than the June 19 proposal, the release provisions in paragraph (b) will likely be applicable for many of the ''parts,'' ''components,'' ''accessories,'' ''attachments'' and ''software'' that would not otherwise have been previously caught by the draft paragraph (a) in the June 19 proposal.

BIS is also amending paragraph (a)(2) to include ''software'' with ''parts,'' ''components,'' ''accessories,'' and ''attachments'' in this final rule. One commenter expressed concerns that ''software'' would be caught under paragraph (a) but not released under paragraph (b), which could potentially catch more ''software'' than intended. BIS shares this concern, and is including ''software'' within the *release* provisions of paragraph (b) in this final rule.

One commenter contended it was unfair that if its ''part'' or ''component'' was excluded under paragraph (a)(1) for the ''part'' or ''component'' to then potentially get caught under ''specially designed'' on the basis of the broader paragraph (a)(2). This comment misses the point that both the *catch* provisions of paragraph (a) and the *release* portions of paragraph (b) are intended to work together to identify those items that warrant being ''specially designed.'' Viewing one paragraph of the definition in isolation misses the larger objectives of the definition, which is to ensure that the appropriate items are classified as ''specially designed'' based on answering a series of simple yes/no questions. Paragraph (b) discussed below is structured in a similar way as paragraph (a) where the public should review each paragraph of (b) to determine whether a particular ''part'' ''component,'' ''accessory'' or ''attachment'' or ''software'' is ''specially designed.'' One distinction between paragraph (a) and (b) is that once exporters determined their ''part,''

''component,'' ''accessory,'' ''attachment,'' or ''software'' is excluded on the basis of any paragraph under (b), no further review of the definition of ''specially designed'' will be necessary.

3. Changes to Note to Paragraph (a)(1)

Several commenters indicated the Note to paragraph (a)(1) was a very good addition to the ''specially designed'' definition in the June 19 (specially designed) rule. However, BIS decided based on some of the comments received that appeared to misunderstand the relationship between paragraphs (a)(1) and (a)(2) that providing an example of an end item or material in the Note to paragraph (a)(1) (demonstrating the applicability and inapplicability of the peculiarly responsible standard) would be more helpful than a component example. Therefore, BIS is replacing the component example of ECCN 2B207.a with an end item example based on ECCN 1A007. The intent of the Note to paragraph (a)(1) is not changing. This final rule is only adding the ECCN 1A007 example because it better reflects the items that will most likely be captured under the (a)(1) criteria and helps to avoid the confusion certain commenters were having in understanding the relationship between paragraphs (a)(1) and (a)(2). Specifically, the Note intends to make clear that ''parts'' or ''components'' not meeting the ''peculiarly responsible'' standard of paragraph (a)(1) may still be caught under the broader controls of paragraph (a)(2).

4. Paragraph (b)—Excluding Items Caught Under Paragraph (a) From ''Specially Designed''

The June 19 definition of ''specially designed'' proposed five exclusions under paragraph (b) for ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that would otherwise be caught as ''specially designed'' under paragraph (a). The *release* portion of the definition plays an important role in the definition and as noted above works together with paragraph (a) to refine the set of ''parts,'' ''components,'' ''accessories'' and attachments'' that get ''caught'' under ''specially designed.'' As discussed above, BIS is expanding paragraph (b) to allow software to be eligible for these exclusions with the exception of paragraph (b)(2) which is specific to certain ''parts'' and minor components specified in that paragraph. Below is a description of the proposed paragraph (b) exclusions, the comments received, and the changes made to the exclusions in this final rule.

5. Paragraph (b)(1)—Resolving Potential Jurisdictional Conflicts and Determining Order of Review

Under the June 19 proposal, paragraph (b)(1) would clarify that a ''part,'' ''component,'' ''accessory,'' or ''attachment'' enumerated on the USML is excluded from the definition of ''specially designed'' within any ECCN on the CCL. In response to proposed paragraph (b)(1), one commenter stated the provision avoids jurisdictional disagreements, while another commenter stated that the provision was redundant and thus added confusion. An additional commenter expressed concerns of a conflict or overlap between proposed Category VIII(h)(1) and proposed ECCN 9A610.y. BIS does not agree that there is a conflict or overlap between proposed Category VIII(h)(1) and proposed ECCN 9A610.y.

BIS agrees that proposed paragraph (b)(1) is redundant, but it was included to remind readers that any ''part,'' ''component,'' ''accessory,'' or ''attachment'' enumerated on the USML is subject to the ITAR. No further review of the catch-all provisions (or other provisions) of the CCL or the EAR definition of ''specially designed'' is necessary. To streamline the definition of ''specially designed,'' BIS is removing the text in paragraph (b)(1) proposed in the June 19 (specially designed) rule and addressing jurisdictional issues and the order of review in the new Supplement No. 4 to part 774, which was discussed above.

Several commenters requested guidance regarding how items subject to past CJs or CCATS determinations would be treated under the ''specially designed'' definition. Specifically, whether a CJ determination ruled that an item was not subject to the ITAR or a CCATS where an item that was subject to the EAR was not classified as a ''specially designed'' item would be treated for purposes of the ''specially designed'' definition. These commenters suggested a grandfathering provision be added to address such past U.S. Government CJ and CCATS determinations.

In addition to addressing these legacy CJs and CCATS, some commenters suggested that although the paragraph (b) exclusions would exclude many of the types of items that should be excluded from ''specially designed'' ultimately either a broadening of some of the paragraph (b) exclusions was needed or, alternatively, some type of U.S. Government review mechanism needed to be created to allow for some discretion in terms of perceived insignificant items that may get ''caught'' under paragraph (a) of the ''specially designed'' definition, but not warrant control as a ''specially designed'' item. As discussed below, BIS is making additional changes to broaden the scope of some of the paragraph (b) exclusions and is making certain changes in this final rule to improve the clarity of these exclusions based on the comments received.

This final rule is also revising the definition proposed in the June 19 (specially designed) rule by adding a new paragraph (b)(1) to address the treatment of past CJ and CCATS determinations. In the case of a CJ determination where an item was determined to not be subject to the ITAR and the CJ determination indicated a classification on the CCL other than as a ''specially designed'' item, such items would remain under that classification and not be ''caught'' under the ''specially designed'' definition. Paragraph (b)(1) would *release* such ''parts,'' ''components,'' accessories,'' ''attachments,'' and ''software.'' This grandfathering provision is added because in these fact-specific cases the U.S. Government has already reviewed the specialness of a particular ''part,'' ''component,'' accessory,'' ''attachment,'' or ''software'' and made a determination that such an item is not ''specially designed.'' Therefore, such items do not warrant being ''caught'' under the ''specially designed'' definition and can be released under paragraph (b)(1) that is being added in this final rule. Under the November 7 (aircraft) rule, BIS proposed a similar grandfathering provision under the .y.99 concept for items determined to be EAR99 in past CJs or CCATS determinations and for items classified under other ECCNs. Such classifications would be grandfathered in. After further review of the public comments, BIS has decided a better and simpler approach is to address issues related to past CJ and CCATS determinations in the definition of ''specially designed'' itself under the new paragraph (b)(1).

The paragraph (b)(1) exclusion grandfathering is based on past CJ determinations that indicated that the classification of the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' on the CCL was in a ECCN paragraph that does not use ''specially designed.'' BIS is aware that in certain cases a CJ may have been issued that did not include a recommendation regarding the appropriate CCL classification, but a subsequent CCATS determination provided the classification. In such cases, a resubmission of the CCATS may be made under the new process

identified in § 748.3(e), which is also included in this final rule, as was discussed above (see Section XVI.A.). Provided there is a consensus interagency agreement with the original CCATS determination that such an item is not ''specially designed,'' such an item would not be caught under ''specially designed'' and would be released under the new paragraph (b)(1) exclusion added in this final rule. The grandfather requests made pursuant to § 748.3(e) should include the original CCATS number, as described above.

The new paragraph (b)(1) exclusion is also forward looking. Paragraph (b)(1) provides a U.S. Government review mechanism for those ''parts,'' ''components,'' ''accessories,'' ''attachments,'' or ''software'' where a person believes such a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is so insignificant or minor that it should not be considered ''specially designed.'' This new paragraph (b)(1) acknowledges that there are additional ''parts,'' ''components,'' accessories,'' ''attachments,'' or ''software,'' that may warrant also being *released* from ''specially designed'' because of their perceived insignificance to the functioning of the item, but in order to protect U.S. national security interests, the U.S. Government, through a consensus determination of the Departments of Commerce, State and Defense, may make such determinations, either through the CJ process or the new CCATS interagency process outlined in § 748.3(e). The new paragraph (b)(1) is not a new idea. It is, in effect, merely the codification for classification determinations of the current practice with respect to the State and Defense Departments' consideration of commodity jurisdiction requests.

6. Paragraph (b)(2)—Parts Common Across All Product Lines That Should Be Excluded From ''Specially Designed''

The June 19 proposed definition of ''specially designed'' included an exception for single, unassembled ''parts'' commonly used in multiple types of commodities not enumerated on the USML or the CCL, with illustrative lists provided for threaded fasteners, other fasteners, and basic hardware. The preamble of the proposed rule noted that minor components were intentionally excluded from the scope of paragraph (b)(2).

Commenters generally supported the concept of paragraph (b)(2), but some requested that the scope of paragraph (b)(2) be expanded to include minor components and to supplement the illustrative lists to specify more ''parts'' or ''components'' that could be *released* under paragraph (b)(2). In addition, some commenters requested that BIS confirm that variations in form or fit would not exclude a ''part'' from qualifying for the exclusion in paragraph (b)(2) and that BIS clarify the phrases ''single unassembled'' and ''multiple types of commodities.''

With this final rule, BIS is confirming that variations in form or fit do not exclude parts or minor components from qualifying for paragraph (b)(2) and is thus adding the phrase ''regardless of form or fit'' to that paragraph to make the intent of the exclusion more explicit. Moreover, BIS concurs with the concerns regarding ambiguity of ''single unassembled'' and ''multiple types of commodities.'' BIS agrees with the commenters that using the phrase ''single unassembled'' is redundant since that phrase is already captured in the definition of ''part.'' With respect to ''multiple types of commodities,'' the intent was to provide an exception in (b)(2) for ''parts'' that are common across different products, such as aircraft and vehicles. ''Multiple types of commodities'' was not meant to apply to ''parts'' common across different models of aircraft only or different versions of vehicles only. To improve clarity, BIS is removing both ''single unassembled'' and ''multiple types of commodities'' from (b)(2) in this final rule.

While BIS did not intend for paragraph (b)(2) to include minor components, it appears that the June 19 proposal included at least one minor component—nut plates. After reviewing the public comments, BIS has decided to retain nut plates and allow certain minor components to qualify for (b)(2). However, BIS is also reducing the scope of (b)(2) by removing the terms ''other fasteners'' and ''basic hardware.'' The ''parts'' that were proposed to be described under ''other fasteners'' and ''basic hardware'' will now be positively listed and will no longer constitute an illustrative list. Based on the public comments, BIS does not believe that ''basic hardware'' provides enough clarity and that it could be construed more broadly than intended. Therefore, these changes result in making paragraph (b)(2) a positive list, with the exception of the illustrative list for threaded fasteners.

These changes to (b)(2) allow for greater flexibility in terms of allowing certain minor components to be released, which was requested in several of the comments. These changes also ensure the ''parts'' and minor ''components'' *released* under the paragraph (b)(2) exclusion will stay within clearly defined parameters. This will ensure that any *release* from ''specially designed'' under paragraph (b)(2) will be consistent with U.S. national security interests by not allowing any other ''parts'' or other minor ''components'' to be released under paragraph (b)(2) than those noted in paragraph (b)(2). As noted above, there will be ''parts'' or other minor ''components,'' that will not be released on the basis of paragraph (b)(2). This does not mean such ''parts'' or ''components'' are necessarily ''specially designed'' because another paragraph (b) exclusion may potentially *release* such ''parts'' or other minor ''components.'' In addition, ''components,'' ''accessories,'' ''attachments,'' or ''software'' that are not eligible for the paragraph (b)(2) exclusion may potentially be released under another paragraph (b) exclusion. If not, and they are caught by paragraph (a), then they would be ''specially designed'' and controlled under the relevant ECCNs.

7. Paragraphs (b)(3)—(b)(6)—How the Exclusions Work Together

Before getting into the discussion of the paragraph (b)(3) comments and provisions implemented in this final rule, it is important that the public understand how proposed paragraphs (b)(3), (b)(4) and (b)(5) work together. Having a better understanding of how these three exclusion paragraphs work together will help the public better understand the intent and scope of these three exclusion paragraphs, as well as the new paragraph (b)(6), discussed below, which was not contained in the June 19 (specially designed) proposed rule but is being added in this rule to simplify the application of paragraph (b)(4) . Paragraph (b)(6) is another example of a ''development'' exclusion similar to paragraphs (b)(4) and (b)(5) discussed here in relation to paragraph (b)(3). The June 19 (specially designed) rule definition included paragraphs (b)(3), (b)(4) and (b)(5). Each of these paragraph (b) exclusions would play an important and distinct role in the *release* portion of the ''specially designed'' definition. Some commenters seemed to have issues regarding understanding the role of these three different paragraphs and conceptually how they would work together to achieve the policy objectives of *releasing* certain ''parts,'' ''components,'' ''accessories,'' ''attachments,'' or ''software.''

The important thing to remember is that paragraph (b)(3) is the ''production'' exclusion. There is thus no need to know the original ''development'' history of the ''part,'' ''component,''

''accessory,'' ''attachment,'' or ''software'' to rely on the paragraph (b)(3) exclusion. The paragraph (b)(3) exclusion recognizes that once a ''part,'' component,'' ''accessory,'' ''attachment,'' or ''software'' is used in the ''production'' of an EAR99 item or an item described on the CCL that is only controlled for AT-reasons that is not in a 'catch-all' paragraph, such a ''part,'' ''component,'' accessory,'' ''attachment,'' or ''software'' regardless of its original ''development'' history or its original significance has crossed over into broader commercial applicability and would no longer warrant control as ''specially designed.''

This paragraph basically adopts the concept in the note to USML Category VIII (the ''17(c) note'') and the carve-outs in USML Categories XI(c) and XII(e) that preclude an electronic, fire control, or other part, component, accessory or attachment that was once specifically designed or modified for a defense article from being ITAR controlled if it has entered into ''normal commercial use.'' BIS does not want its catch-all provisions pertaining to parts, components, accessories, and attachments to be more restrictive than the comparable provisions in the USML. Thus, for example, if an aircraft part would not be ITAR controlled as a result of the note in USML Category VIII, the part would not be controlled by 9A610.x as a result of the application of the definition of ''specially designed.'' Moreover, the policy in ITAR § 120.3(a) states that items designed or modified for military applications should not be ITAR controlled if they have predominant civil applications or performance equivalents to those of an article used in civil applications. To the extent an item meeting these standards nonetheless warrants control, the U.S. Government has an obligation to positively identify it on the USML or in a particular ECCN. If it does not, then such items should not be captured within the scope of a ''specially designed'' catch-all provision. Paragraph (b)(3) accomplishes this already existing ITAR policy in the EAR and applies it across the CCL. It is, thus, not a new idea, but merely a consolidation of existing control concepts in one definition.

Unlike in paragraph (b)(3), in order to rely on either paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6) described below, the ''development'' history is important and must be known. The paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6), exclusions *release* certain ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ''software'' if the person has ''knowledge'' of the ''development'' history and that meets the stated criteria in paragraphs (b)(4) or (b)(5). In summary, paragraph (b)(3) is the ''production'' exclusion. Paragraphs (b)(4) and (b)(5), and also the new paragraph (b)(6) described below, are the ''development'' exclusions.

Some commenters noted concerns that applying paragraphs (b)(4) and (b)(5) for items that are decades old may be difficult because the original development history may no longer be known. If the original ''development'' history is no longer known, then a person could not rely on the paragraphs (b)(4) or (b)(5) exclusion or the new paragraph (b)(6) being added in this final rule. However, if the ''part,'' ''component,'' ''accessory,'' ''attachment'' or ''software'' was truly ''developed'' for use in the ''production'' of those lower level items or for no particular purpose, the chances are good that the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software,'' would have subsequently been used in the ''production'' of an item that would meet the criteria of paragraph (b)(3), in which case the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' would be excluded from ''specially designed'' on the basis of paragraph (b)(3) regardless of the original ''development'' history. Again, paragraphs (b)(4) and (b)(5) are not new ideas. Central to the existing ITAR and EAR export control structures is the concept that an item is not ''specially designed'' for a controlled item if it was deliberately made for use in both controlled and uncontrolled applications, i.e., a ''dual-use'' item. The primary difference between the current concept and this new definition is that one must now be able to prove the design intent through contemporary documentation in order to be able to rely upon this *release* part of the mechanism. Without such documentation, parts and components that are used in or with controlled items and that do not otherwise meet one of the *release* provisions of paragraph (b) are ''specially designed'' items. BIS understands from the public comments that this is a more aggressive control stance than many perceive to be the case today. BIS nonetheless believes that it is better for the national security and other objectives of the reform effort in that it controls the items the U.S. Governments wants to control and creates more reliable, predictable rules that are easier to comply with.

8. Paragraph (b)(3) (i.e., the ''Production'' Exclusion)—Releasing Commodities and Software Equivalent to Existing Commodities and Software Used in the ''Production'' of Items That Are Not on the USML or CCL or Controlled for AT Reasons Only

In the June 19 (specially designed) rule, BIS proposed an exclusion under paragraph (b)(3) for ''parts,'' ''components,'' ''accessories,'' or ''attachments'' ''caught'' under paragraph (a) if such items have the same form, fit, and performance capabilities as a ''part,'' ''component,'' ''accessory,'' or ''attachment'' used in or with a commodity that (i) is or was in ''production'' and (ii) is either not enumerated on the USML or CCL, or is described in an ECCN controlled only for AT reasons. Additionally, while proposed paragraph (b)(3) requires the same form, fit, *and* performance capabilities, BIS can also confirm that paragraph (b)(3) does not require a design intent analysis and eliminates any concern that market fluctuations resulting in more sales to military applications in some years but not others could lead to an item's having its classification status changed as a result.

The most prevalent comment submitted in response to proposed paragraph (b)(3) was that the paragraph was too narrow by requiring the same form, fit, *and* performance capability for it to apply. Commenters recommended various changes, including allowing ''minor'' changes in fit, certain changes in form, or only requiring the same performance capability. One commenter recommended that only certain types of changes in fit be allowed, and the commenter specified that those changes should be allowed for mounting, control values on electronic parts, or cosmetic changes. Other commenters requested clarification on specific instances of changes in form or fit, such as for conversion from British imperial units to metric units or changes to mounting brackets. Additionally, should the same form, fit, and performance capability be required, some commenters requested that BIS create a process to release items caught by ''specially designed'' if changes in form or fit are found to be insignificant, which BIS has accepted, but addressed the requested change under the discussion of revised paragraph (b)(1) above instead of here. Commenters also suggested that commodities previously determined under a CJ to be subject to the EAR should remain under EAR jurisdiction and not revert back to the ITAR under a ''specially designed'' control in the USML. BIS has also accepted this

change, but addressed the requested change under the discussion of revised paragraph (b)(1) and new § 748.3(e) CCATS process above instead of here.

The June 19 proposed paragraph (b)(3) follows the same construct as § 120.3 of the ITAR in requiring the same form, fit, *and* performance capabilities. BIS used the criteria of the same form, fit, and performance capabilities because one change to a specific ''part'' or ''component'' may be deemed to be minor or insignificant; however, the same change to the same ''part'' for a different ''component'' or end item may not be minor or insignificant. Consequently, BIS and its interagency partners do not agree with the comments that allowing a subjective significance test for changes made to any ''part,'' ''component,'' ''accessory,'' or ''attachment'' would be appropriate in the context of the paragraph (b)(3) exclusion.

However, BIS and its interagency partners agree that there is a way to allow for certain changes in form and fit within the scope of the paragraph (b)(3) exclusion, while not opening the door of subjectivity that was at the core of the original rationale for requiring the same form, fit and performance capabilities. BIS is revising the introductory text of the paragraph (b)(3) exclusion to specify the commodity or software must have the same function, performance capabilities and the same or 'equivalent' form and fit as a commodity or software used in or with an item that is in ''production'' that meets the criteria of paragraph (b)(3)(ii). The inclusion of 'equivalent' form and fit addresses the public comments in this area and provides relief for insignificant or minor changes in form or fit, while still keeping this exclusion within the carefully drawn bounds of what was originally intended in the June 19 (specially designed) rule. Such permissible changes in fit must be clearly identified to ensure no change in form or fit that may affect U.S. national security interests is released under paragraph (b)(3). The revised paragraph (b)(3) in this final rule addresses the comments in this area, while keeping consistent with the larger objectives BIS intends for the ''specially designed'' definition.

9. Revised Note to Paragraph (b)(3) and New Notes 2 and 3 to Paragraph (b)(3)

As a result of changes BIS is making to paragraph (b)(3) in this final rule to address the comments, BIS found it necessary to also make changes to the Note to paragraph (b)(3) included in the June 19 (specially designed) rule, and to add two notes to paragraph (b)(3). These two additional notes will further bound the paragraph (b)(3) exclusion to ensure the exclusion is not interpreted more broadly than intended.

The original Note to paragraph (b)(3) included in the June 19 proposal is being redesignated as Note 1 to paragraph (b)(3) in this final rule. Some public comments requested additional guidance regarding the applicability of the Note to paragraph (b)(1) included in the June 19 (specially designed) rule proposal. BIS acknowledges that additional guidance should be provided regarding the applicability of the proposed Note to paragraph (b)(1). BIS is also including additional text to the Note to paragraph (b)(1) to describe the difference between development activities for ''feature enhancements'' versus those that ''change the basic performance or capability'' to address these comments requesting additional clarification. Specifically, this final rule is adding the phrase ''such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF))'' after the phrase '''development' activities'' to further clarify the types of commodities or software that may be subject to subsequent ''development'' activities, but still stay within the scope of the paragraph (b)(3) exclusion.

BIS is adding a new Note 2 to paragraph (b)(3) to define the term 'equivalent' for purposes of the limited form and fit changes that are being allowed under the revised paragraph (b)(3) in this final rule. This new note will clarify that with respect to a commodity, 'equivalent' means that its form has been modified *solely* for fit purposes. As noted above, to allow for certain changes in form and fit to be permissible within the scope of the paragraph (b)(3) exclusion, it is important that the permissible form and fit changes be clearly defined. This new note will ensure the paragraph (b)(3) exclusion is not interpreted more broadly than is intended by BIS and also aid the public's understanding.

At the suggestion of commenters, BIS is also adding a new Note 3 to paragraph (b)(3) to define form, fit, performance capabilities and function for commodities and software in the context of the paragraph (b)(3) exclusion. Because form, fit, and performance capability are important terms used in the paragraph (b)(3) exclusion and have been referenced widely under the ITAR, BIS is adopting the explanatory text of the ITAR from the Note to § 120.4 of the ITAR, subject to slight revisions to make the definitions specific to the EAR. This explanatory text is being added as a new Note 3 to paragraph (b)(3) in this final rule. This new note will provide additional guidance to the public on how to interpret changes in form, fit, performance capabilities and function in the context of the paragraph (b)(3) exclusion.

BIS is also making additional changes to the text of paragraph (b)(3) to improve the clarity of what was proposed in the June 19 (specially designed) rule and to address the expansion of paragraph (b)(3) to include ''software.'' Because software is being included in the paragraph (b) *release,* BIS is revising the introductory text of paragraph (b)(3) to add two references to ''software.'' Also, for the paragraph (b)(3)(ii) criteria, BIS is replacing ''enumerated'' with ''described'' in relation to an ECCN controlled only for AT reasons because the use of 'enumerated' in that context conflicts with the definition of the term in Note 1, as was noted in the public comments.

Commenters also suggested deleting the reference to ''production'' and removing the reference to paragraph (b)(3) in Note 1 to the definition as proposed in the June 19 (specially designed) rule. BIS does not accept this recommendation. BIS is maintaining the reference to ''production'' as (b)(3) is intended to address equivalence to existing items already in ''production,'' as opposed to those in ''development.'' Also, BIS is maintaining the reference to AT controls in (b)(3) of Note 1, because some AT controls have ''specially designed'' in their descriptions. BIS is removing the reference to ''enumerated'' because the public found this aspect of paragraph (b)(3)(ii) and its relationship to Note 1 unnecessarily complicated. This change will improve clarity and simplify applying the definition.

Lastly, in evaluating whether the paragraph (b)(3) exclusion or any of the other paragraph (b) exclusions is broad enough in scope, it is important to review the specific paragraph (b) exclusion, such as paragraph (b)(3), in light of the other paragraph (b) exclusions included in this final rule. In the case of paragraph (b)(3), it is particularly important to also consider the revised paragraph (b)(1) described above that is creating a 'release' process whereby the public may submit additional ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for reconsideration when they believe the changes in form or fit would make them no longer eligible for the paragraph (b)(3) exclusion, but still believe such items should be treated as insignificant or minor and therefore not warrant

being ''specially designed.'' This revised and slightly expanded paragraph (b)(3), working with the additional potential 'release' under paragraph (b)(1) through the CJ process or the CCATS process described in § 748.3(e), addresses the public comments in regards to the paragraph (b)(3) exclusion being unnecessarily limited in scope.

10. Paragraphs (b)(4) and (b)(5), and the New Paragraph (b)(6) (i.e., the ''Development'' Exclusions)—Incorporating Intent During the Development Phase for Consideration of Whether To Exclude Certain Commodities From ''Specially Designed''

To address the concern that a first use of a ''part'' or ''component'' could result in the part or component being considered ''specially designed,'' BIS incorporated aspects of design intent into proposed paragraphs (b)(4) and (b)(5) and the new paragraph (b)(6) being added in this final rule. As noted above in the discussion on the relationship among paragraphs (b)(3), (b)(4) and (b)(5), and the new paragraph (b)(6), paragraphs (b)(4) and (b)(5) and the new paragraph (b)(6) are the ''development'' exclusions. Under the June 19 proposal, paragraph (b)(4) would exclude ''parts,'' ''components,'' ''accessories,'' and ''attachments'' if they were or are being developed with a reasonable expectation of (i) use in or with commodities described on the CCL and commodities not enumerated on the CCL or USML, or (ii) use in or with commodities not enumerated on the CCL or USML. Paragraph (b)(5) would exclude ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are developed for no particular application.

Some commenters mistakenly believed that paragraphs (b)(4) and (b)(5) depend on predominant market share of the item, while other commenters correctly understood that (b)(4) and (b)(5) were not dependent on predominant market share, but requested confirmation that their understanding was correct. BIS can confirm that market share does not have an impact on the applicability of paragraphs (b)(4) and (b)(5). Paragraphs (b)(4) and (b)(5) are rather dependent on intent during the ''development'' of the item. By definition, market share cannot be an issue because at the time of its ''development'' the item had not yet been released to the market. Likewise, an evolving market (e.g., shift from primarily civilian customers to military customers) following release of the ''part,'' ''component,'' ''accessory,'' ''attachment'' or ''software'' does not change the earlier determination made during the time of ''development.'' This approach essentially adopts the policy of § 120.3 of the ITAR that the ''intended use of the article * * * after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article'' is subject to controls. Thus, again, BIS is not introducing a new concept in export control law, but rather applying more broadly in the EAR for classification purposes and in one definition a concept that is already in the ITAR's statement of policy regarding the types of unspecified items that warrant control for export. In other words, the jurisdictional and classification status of an item should be set at its production and development stages and not affected by how it is later used. If something is so significant that it warrants control regardless of the intention of the designer, then it is the U.S. Government's obligation to positively list that item on the USML or the CCL.

''Knowledge'' of the original design intent must be demonstrated, however, by documents contemporaneous with ''development,'' in their totality, as required under the Note to proposed paragraphs (b)(4) and (b)(5), which is now becoming Note to paragraphs (b)(4), (b)(5) and (b)(6) in this final rule as described below. Thus, for a reseller, laboratory, or other non-manufacturer to rely upon (b)(4) or (b)(5) or the new paragraph (b)(6) in determining that the item is not ''specially designed,'' such party must examine the source of ''development'' for documentation or have some other reliable source regarding the original ''development'' history. This requirement does not increase the burden common to compliance practices today. It is possible, though, for a non-manufacturer or any other party to use the exclusions under new paragraph (b)(1), or paragraphs (b)(2) or (b)(3), as discussed above, without having to rely on paragraphs (b)(4) or (b)(5) or the new paragraph (b)(6), which do require ''knowledge'' of the original design intent based on the totality of documentation contemporaneous with the ''development'' to demonstrate the criteria in exclusion paragraphs (b)(4) or (b)(5) or the new paragraph (b)(6).

With respect to (b)(4), BIS also received additional comments requesting clarification of the term ''reasonable expectation,'' as well as replacing ''described'' with ''enumerated'' in (b)(4)(i), replacing ''commodities'' with ''end items'' in (b)(4)(i), replacing ''use'' with ''ultimate use'' in both (b)(4)(i) and (b)(4)(ii), and adding ''both'' to (b)(4)(i). To clarify ''reasonable expectation,'' BIS has decided to replace the phrase with the term ''knowledge,'' which is already defined in part 772 of the EAR. By adopting the already defined term ''knowledge'' for paragraph (b)(4), the release portion of the definition of specially designed will establish a more objective standard that will be more easily understood by the public. In developing the ''specially designed'' definition BIS has tried to rely as much as possible on established EAR terms and concepts. The public has generally been quite supportive of this approach of relying on established concepts and terms as much as possible in developing the ''specially designed'' definition. Adopting the term ''knowledge'' for paragraph (b)(4) and the new paragraph (b)(6) in this final rule is another example of simplifying the ''specially designed'' definition, while also establishing a more objective definition by relying on established terms and concepts under the EAR. BIS does not accept replacing ''described,'' ''commodities,'' or ''use'' as those recommendations would make the paragraph (b)(4) exclusion too narrow. BIS did not accept the recommendation to add ''both'' to (b)(4)(i), but BIS is adding the term ''also'' to (b)(4)(ii) in this final rule. BIS is making this change to make the relationship between (b)(4)(i) and (ii) more explicit in terms of the criteria that must be met for a ''part,'' ''component,'' ''accessory, ''attachment,'' or ''software'' to be excluded on the basis of the paragraph (b)(4) exclusion.

For paragraph (b)(5), for the same rationale noted above for the changes to paragraph (b)(4), BIS, in this final rule, is also replacing ''reasonable expectation'' with ''knowledge.'' Because ''knowledge'' is now going to be included in the paragraph (b)(5) exclusion, BIS is also deleting the proposed Note to paragraph (b)(5). BIS is making this change because including the explanation of the definition of ''knowledge'' from the June 19 (specially designed) rule would be redundant given ''knowledge'' is already a defined term in part 772.

As a clarification to what was proposed in the June 19 (specially designed) rule, BIS is making some additional changes to the wording of the paragraph (b)(5) exclusion. These changes do not change the scope of the exclusion proposed on June 19, but clarify what is being excluded from ''specially designed'' on the basis of paragraph (b)(5). First, after the word ''developed,'' BIS is adding the phrase ''as a general purpose commodity.'' BIS is also adding an ''i.e.,'' in this final rule

after that new phrase to specify that a general purpose commodity is one that was or is being ''developed'' with no ''knowledge'' of intended use in a particular commodity or type of commodity.

In this final rule, BIS is removing the phrase ''particular application'' from what was proposed (b)(5) in the June 19 (specially designed) rule and replacing it with ''particular commodity'' because commenters expressed concerns with the use of ''application,'' and BIS believes that using ''commodity'' will ensure maintaining the appropriate scope of (b)(5) and enhance clarity. In addition, to further address the public comments in this area in terms of adding greater specificity, BIS is adding a second qualifier with the phrase ''or type of commodity'' in this final rule. BIS is adding two illustrative examples for a particular commodity by adding the examples of an F/A–18 or HMMWV. For example, if the person has ''knowledge'' a component was or is being developed for a F–18 or other military aircraft, such a commodity is *not* a general purpose commodity and therefore could *not* be excluded from ''specially designed'' on the basis of paragraph (b)(5). BIS is also adding two illustrative examples for ''a type of commodity'' by including the examples of an aircraft and machine tool. For example, if the person has ''knowledge'' a part was or is being developed for an aircraft, such a commodity is *not* a general purpose commodity and therefore could *not* be excluded from ''specially designed'' on the basis of paragraph (b)(5).

BIS is adding a new paragraph (b)(6) in this final rule that will *release* from ''specially designed'' ''parts,'' ''components,'' ''accessories,'' ''attachments, and ''software'' where there is ''knowledge'' that it would be for use in or with commodities or software described in an ECCN controlled for AT-only reasons and also EAR99 commodities or software. This paragraph (b)(6) exclusion that is being added in this final rule will also *release* from ''specially designed'' those ''parts,'' ''components,'' ''accessories,'' ''attachments'' and ''software'' where the item was or is being developed with ''knowledge'' that it would be exclusively for use in or with EAR99 commodities or software.

By adding the (b)(6) exclusion, BIS can simplify the application of paragraph (b)(4), including aligning it more closely with the structure and terminology used in paragraph (b)(3), along with addressing those scenarios where there is ''knowledge'' that the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' was developed for use in or with commodities or software ECCNs controlled for AT-only reasons and EAR99 or exclusively for use in or with EAR99 commodities or software. BIS believes having a separate paragraph (b)(6) exclusion to *release* such ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ''software,'' will be easier to understand than trying to fit this exclusion within the scope of paragraph (b)(4). Finally, for the Note to paragraphs (b)(4) and (b)(5), one commenter stated that the recordkeeping requirement could be overlooked, and another commenter requested that military specifications be included as an example of documentation to establish the elements of (b)(4) or (b)(5). BIS is also updating the title of this note to reflect the new paragraph (b)(6) exclusion being added to the definition in this final rule. The revised note is Note to paragraphs (b)(4), (b)(5) and (b)(6). To address the concern of overlooking recordkeeping requirements, BIS is inserting a reference to the ''specially designed'' recordkeeping requirement in § 762.2 (Records to be maintained) under a new paragraph (b)(50) as described below. BIS does not accept, however, the recommendation to add military specifications to the note. Generally, military specifications are not determinative of jurisdiction and are just one factor for consideration. Thus, they do not warrant inclusion in the illustrative list of contemporaneous documentation included in that note.

11. Implementation of Definition of ''Specially Designed''

Like the rest of this final rule, this definition of ''specially designed'' will become effective as of October 15, 2013. Some commenters asked that BIS phase and test the implementation for ''600 series'' items only. BIS does not accept this recommendation. In order to ensure consistency with the multilateral regimes and reduce further complexity, BIS is adopting this definition of ''specially designed'' for all uses of the term on the CCL. Because this definition is an important concept under the EAR, BIS will work to conduct outreach and develop tools to help the public's review and use of the term. The Department of State has indicated it also intends to conduct similar outreach with the public for the use of the term under the ITAR.

B. Other Definitions

BIS proposed adding or revising several definitions to part 772 of the EAR under ECR. These definitions will aid in aligning the CCL with the USML by adopting common definitions for terms used in the CCL and the USML where possible. In total, this final rule adds or revises fifteen CCL terms. Specifically, this final rule adds twelve definitions to the EAR: ''600 series,'' ''600 Series Major Defense Equipment,'' ''accessories,'' ''attachments,'' ''build-to-print technology,'' ''component,'' ''end item,'' ''equipment,'' ''facilities,'' ''material,'' ''part'' and ''systems.'' This final rule also revises three definitions currently in the EAR: ''military commodity,'' ''dual use,'' and ''specially designed.''

New or revised definitions for these terms were proposed in one or more of three rules published under ECR: the July 15 (framework) rule; the November 7 (aircraft) rule; and the June 19 (specially designed) rule. Definitions of ''end item,'' ''accessories and attachments,'' and ''specially designed'' originally were proposed in the July 15 (framework) rule and were re-proposed in revised form in the June 19 (specially designed) rule. The term ''600 Series Major Defense Equipment'' was not previously proposed as a definition; however, the concept was introduced in the June 21 (transition) rule and several commenters requested that it be included as a definition in part 772 of the EAR. As described in the June 21 (transition) rule, the definition addresses items for which notification would be required to Congress prior to approval of certain high-value exports. This rule also revises the term ''dual use'' as a conforming change, although the change was not previously proposed.

1. 600 Series

This final rule adopts the definition of ''600 series'' that was proposed in the July 15 (framework) rule without any substantive changes, except to remove a reference to the Commerce Munitions List, a phrase used in several of the proposed rules that has been removed to avoid confusion regarding whether the ''600 series'' is part of the CCL. BIS did not receive any comments on the definition of 600 series.

2. 600 Series Major Defense Equipment

This rule adopts a definition of ''600 Series Major Defense Equipment'' that includes all of the elements that were in the proposed Major Defense Equipment section of the June 21 (transition) rule, but adds an element, limiting ''600 Series Major Defense Equipment'' to items contained in specified ''600 series'' ECCN paragraphs. BIS did not receive any comments on the definition of Major Defense Equipment.

3. Component

This final rule adopts the definition of ''component'' that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested removing the example of ''battery'' from the ''component'' definition because of potential ambiguity regarding whether a battery would be considered a ''component'' or an ''end item.'' Specifically, the commenter questioned whether an item, such as a car battery that can put out an electrical charge whether it is incorporated into an automobile or not, would cause ambiguity regarding whether it is an ''end item'' or a ''component.'' BIS is not changing the example of the ''battery'' in the definition of ''component.'' The revised ''end item'' definition that was proposed in the June 19 (specially designed) rule also addressed this comment regarding the reference to a car battery in the example of ''component.'' BIS believes the primary reason for the commenter's confusion was the use of the term ''stand-alone'' in the ''end item'' definition that was proposed in the July 15 (framework) rule. The re-proposed ''end item'' definition included in the June 19 (specially designed) rule addressed this issue by removing the term ''stand-alone.'' This change to the definition of ''end item'' also addressed the comment here by resolving any potential perceived ambiguity regarding whether a ''component,'' such as car battery, would be an ''end item.''

Two commenters suggested that the definition of ''component'' improperly equates ''components'' and assemblies. The commenters noted that ''components'' and assemblies should be distinct terms, as such, the definition of ''component'' should be limited to items that are not subject to disassembly. BIS does not agree with the commenter's suggestion. During drafting of the July 15 (framework) rule, members of BIS's Technical Advisory Committees (TACs) advised BIS that assemblies should be within the scope of the ''component'' definition. Based on the guidance provided by BIS's TACs and the U.S. Government's own analysis, BIS stated in the ''component'' definition that, for purposes of the definition, an assembly and a ''component'' are the same. At this time, given only two commenters raised this issue, and BIS's TACs, which comprise representatives from various industries, advised taking BIS's proposed approach, BIS will not incorporate the suggestion because information from the TACs suggested that a number of industries involved in exporting treat assemblies as components and therefore the ''component'' definition should reflect this.

In addition, BIS does not agree that the criteria provided by one of the commenters for distinguishing between an assembly and a ''component'' would be sufficient. The criteria provided by the commenter would likely result in inadvertent decontrols of ''components'' on the CCL where a case could be made that the item in question is an assembly and not a ''component.'' The term ''component'' is used extensively on the CCL and the term ''assembly'' much less so, so taking this commenter's approach would likely have far reaching impacts on the scope of the CCL, which likely would be inconsistent with U.S. Government multilateral regime commitments to control certain components. As noted in the BIS response to the next comment, the U.S. Government intends to discuss with the Wassenaar Arrangement four entries in which the terms ''components'' and ''assemblies'' are used in the same ECCN. The U.S. Government may reevaluate this issue after those discussions are complete.

One commenter noted the need to update the headings and descriptions of certain items enumerated on the CCL. The commenter noted as an example that ECCN 9A003, which currently controls previously undefined ''specially designed assemblies and components'' should be changed to reflect the new definitions of ''components'' and ''parts.'' BIS has already taken steps to address this comment with the development of another ECR rule, *Revisions to the Export Administration Regulations (EAR) to Make the Commerce Control List (CCL) Clearer.* This rule is referred to as the (CCL Clean-up) rule. It will implement changes that published in a proposed rulemaking also entitled *Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List (CCL) Clearer* (77 FR 71214, November 29, 2012). In the (CCL Clean-up) rule, BIS will make a number of changes to the CCL to incorporate the terms ''parts'' and ''components'' in specific ECCNs and to address other issues such as the use of both ''assemblies'' and ''components'' in a number of ECCNs to conform to the definitions of ''parts'' and ''components'' added in this final rule. These changes in the way ''parts'' and ''components'' are used on the CCL will ensure that no changes are made to the status quo in terms of how the U.S. Government interprets these ECCNs.

One commenter asked for clarification as to whether ''software'' can also be considered a ''component.'' BIS is clarifying here that the definition of ''components'' does not include ''software.'' ''Software'' is defined separately under part 772 of the EAR.

One commenter provided an alternative definition of ''components'' that would remove the discussion of ''major components'' and ''minor components.'' This commenter thought these proposed changes would add clarity and better distinguish ''components'' from ''accessories and attachments.'' BIS is not incorporating this suggestion. The references to major components and minor components that were proposed in the July 15 (framework) rule provide additional specificity regarding what is a ''component.'' This additional text identifying the two types of components (*i.e.,* major components and minor components) does not create ambiguity regarding what is a ''component'' and what is an ''accessory'' or an ''attachment.'' In addition, although the terms ''minor component'' and ''major component'' are not widely used on the CCL, BIS intends over time and in conjunction with the multilateral export control regimes to use these ancillary terms of the ''component'' definition to further refine the scope of certain ECCNs.

4. Equipment

In response to the comments received on the July 15 (framework) rule, this rule changes the definition of ''equipment'' from that definition that was proposed in the July 15 (framework) rule. The new definition of ''equipment'' being adopted by BIS is consistent with the definition of ''equipment'' proposed by DDTC in its November 28, 2012 proposed rule regarding Category XI (77 FR 70958).

One commenter contended that there is no need to separate the ''equipment'' definition from the ''end item'' definition. The commenter noted that the term ''equipment'' is mentioned in the ''end item'' definition and is treated no differently from an ''end item.'' Accordingly, the commenter suggested that breaking ''equipment'' out as a separate definition adds confusion rather than clarity, and recommended that it be folded into the ''end item'' definition. BIS does not incorporate the suggestion because ''equipment'' is a sub-set of ''end items,'' but not all ''end items'' would meet the ''equipment'' definition. Similar to the relationship between the broader term ''item'' and narrower terms of ''commodity,'' ''software,'' and ''technology,'' the

relationship between the broader term ''equipment'' and ''end items'' is not mutually exclusive. The term ''equipment'' is used extensively on the CCL and is used in the ''600 series,'' including in the ECCNs added with this final rule. In addition, the term ''equipment'' is used extensively on the multilateral export control regime control lists, including the Wassenaar Arrangement Munitions List (WAML). Therefore, BIS has determined that adding a definition for this term is warranted and will assist the public in understanding the meaning of this term when used on the CCL.

One commenter suggested replacing the phrase ''assembled for a specific purpose'' with the phrase ''gathered, collected or compiled for a specific purpose'' to avoid confusion about whether sets of tools or devices are assemblies or equipment. BIS does not agree with this suggestion. However, to clarify any confusion about the difference between ''component'' and ''equipment,'' this rule changed the definition of ''equipment'' to be a ''combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized function of an end item or system.'' BIS believes that this change to the definition of ''equipment'' clarifies any confusion raised by the proposed definition.

For example, a laser device incorporated into a cutting saw that allows the operator to precisely line up the cut would be a ''component.'' A laser device that is assembled for the purpose of allowing a person to determine a straight line on a wall to hang a picture is an example of a laser device that would be ''equipment.'' The definitions of ''component'' and ''equipment'' added to the EAR with this final rule are clear enough in scope to allow the public to make such distinctions.

5. Facilities

This final rule adopts the definition of ''facilities'' that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested removing the phrase ''a particular purpose'' from the definition of ''facilities,'' and replacing it with the more specific phrase, ''the particular purpose stated in the export control item using the term 'facilities.' '' BIS agrees with the commenter's general assumption regarding how controls on ''facilities'' are typically worded under the EAR, but the purpose of the definition of ''facilities'' in part 772 is not intended to impose controls on any particular type of facility. The further identification of the types of ''facilities'' subject to control is in the particular ECCN entries and does not need to be referenced in the definition of ''facilities'' in part 772. In the context of ECCNs or other controls under the EAR, such as end use controls that use the term ''facilities,'' those controls will specify the types of ''facilities'' that are subject to control. Therefore, no additional text is needed in the definition to clarify the type of ''particular purpose'' that is controlled for an ECCN or other EAR control that uses the term ''facilities.''

6. Material

This final rule adopts the definition of ''material'' that was proposed in the July 15 (framework) rule, with a minor non-substantive change to ensure that the definition conforms to the definitions of ''accessories'' and ''attachments'' being added to part 772 in this final rule and discussed below. This conforming change separates the terms ''accessories and attachments'' into two distinct terms, ''accessories'' and ''attachments,'' as was proposed in the June 19 (specially designed) rule.

One commenter identified certain Product Group C ECCNs in CCL Category 1 controlled for Nuclear Nonproliferation (NP) reasons that were perceived to be inconsistent with the proposed ''material'' definition because they extend NP controls to certain end items, components, accessories, attachments, parts, software, systems, equipment, or facilities. BIS addresses this comment in this final rule by adding a sentence to the end of the definition making clear that material classified as a Product Group C ECCN remains classified as that ECCN even if the material can be identified as an ''end item,'' ''component,'' ''accessory,'' ''attachment,'' ''part,'' ''software,'' ''system,'' ''equipment,'' or ''facility.'' This new sentence also identifies the Product Group C ECCNs that deviate from the general definition. For example, ECCN 1C232 controls ''Helium-3 (^{3}He), mixtures containing helium-3, and products or devices containing any of the foregoing.'' Thus, a product containing the material Helium-3 (^{3}He) that is also identifiable as a ''component'' or ''part,'' is still controlled under ECCN 1C232.

One commenter suggested that ''software,'' ''system,'' ''equipment,'' and ''facilities'' are so unlikely to be mistaken as ''crude or processed matter'' as to not warrant mention in the definition of ''material,'' unless the intention is to make ''material'' a catch-all. This commenter believes the ''material'' definition should simply be limited to the first part of the proposed definition, meaning material ''is any list-specified crude or processed matter.'' BIS does not agree because the term ''processed matter'' in particular has the potential to be interpreted broadly unless the exclusions are included in the definition of ''material'' as was proposed in the July 15 (framework) rule. For example a ''part'' or ''component'' of an engine prior to entering the manufacturing process will likely be a type of processed material, such as a piece of hardened steel. As the production process progresses, the ''material'' such as the hardened steel will transition from ''processed matter'' to a ''part'' or a ''component'' or some other type of item excluded from the ''material'' definition. Once the processed ''material'' is identifiable as one of those types of items excluded from the ''material'' definition, it would no longer be controlled under Product Group C as a ''material'' and should therefore be controlled under the other ECCN entry as a ''part'' or ''component'' in either Product Groups A or B.

One commenter recommended the deletion of the definition of ''material'' because the commenter had not identified a need for such a definition. The commenter also noted the proposed definition is in a negative, rather than the desired positive, format. BIS does not agree that this definition is not needed because adding this definition of ''material'' helps to better align the CCL with how the term ''material'' is used under the USML and also how it is used under the Wassenaar Arrangement's WAML. BIS does not agree the definition is written in the negative. The first part of the definition is written in positive terms and the second part excludes in a positive fashion those items within the scope of those other defined terms identified in the last sentence to the ''material'' definition.

7. Military Commodity

This final rule adopts the definition of ''military commodity'' that was proposed in the July 15 (framework) rule. In response to comments, this final rule makes the reference to the ''600 series'' Related Controls paragraphs more explicit by moving the Related Controls reference to the beginning of the list of ''600 series'' ECCNs referenced in the ''military commodity'' definition. In addition, this final rule adopts a more general reference to the related controls paragraphs for the ''600 series,'' instead of identifying specific ''600 series'' ECCNs, as was originally proposed in the July 15 (framework) rule. This approach is not substantively

different from the proposal in the July 15 (framework) rule. Including a general reference to the ''600 series'' instead of separately listing each ''600 series'' ECCN will reduce the need to update this definition each time ECCNs are added to or removed from the ''600 series.''

One commenter suggested that, in the definition of ''military commodity,'' the phrase ''Related Controls for'' be relocated to before reference to ''600 series'' ECCNs. This would make it clear that none of these ECCNs covers ''military commodities.'' BIS agrees that moving the ''(Related Controls)'' reference to the beginning of the ''600 series'' ECCNs referenced in the ''military commodity'' definition will communicate more clearly the intent of this cross reference to these ''600 series'' ECCNs.

8. Part

This final rule adopts the definition of ''part'' that was proposed in the July 15 (framework) rule without any changes.

One commenter suggested expanding the scope of the ''part'' definition to include passive electrical parts. Specifically, this commenter suggested expanding the scope of the definition to include basic building block electrical parts, including, for example, capacitors, resistors, connectors, and thermistors, that are passive single-function parts (i.e., excluding active components such as integrated circuits that perform active, and in some cases, multiple functions). The definition of ''part'' proposed in the July 15 (framework) rule was intended as much as possible to create a common definition of this term under the EAR and the ITAR. BIS does not adopt the suggested change because it would blur distinctions between what is a ''part'' and a ''component.'' Adopting the commenter's suggested change would broaden the scope of the ''part'' definition and would create a fundamental difference between the EAR definition and the ITAR definition of ''part.''

One commenter suggested deleting the definition of ''part'' and all references to ''parts'' in the EAR and ITAR. To support this position, the commenter cites the examples given in the definition of ''part'' that are explicitly excepted from the definition of ''specially designed.'' BIS is not incorporating either this suggested change of removing all ''parts'' references from the CCL or the suggestion to not add a definition of ''parts'' to part 772 of the EAR. The intent of the CCL, among other things, is to control certain ''parts.'' As such, certain ECCNs describe ''parts'' that are subject to control under those ECCNs. The ''600 series'' ECCNs in particular would in most cases control ''parts'' under the .x and .y ''items'' paragraphs. This includes several of the ten ECCNs added to the CCL in this final rule. In terms of the reference to ''parts'' and ''specially designed,'' this person was referring to the definition of ''specially designed'' that was proposed in the July 15 (framework) rule. This same type of exclusion was also proposed in the June 19 (specially designed) rule and the definition of ''specially designed'' included in this final rule. However, the commenter appears to be confused regarding the relationship between certain ''parts'' that may be excluded under paragraph (b)(2) of the ''specially designed'' definition and the definition of ''parts.'' Not all ''parts'' that are controlled on the CCL are ''specially designed'' ''parts.'' The commenter incorrectly infers that, because certain ''parts'' are excluded from ''specially designed'' on the basis of being excluded under paragraph (b)(2), all ''parts'' should therefore not be controlled on the CCL. This is not a correct interpretation of either the ''specially designed'' definition or the intent of the U.S. Government in terms of how ''parts'' should be controlled on the CCL. The paragraph (b)(2) exclusion under ''specially designed'' also includes other criteria, which further refine the set of ''parts'' that would be excluded from ''specially designed'' on the basis of that exclusion paragraph.

9. System

This final rule adopts the definition of ''system'' that was proposed in the July 15 (framework) rule without any changes.

One commenter expressed difficulty in distinguishing between what items would be captured under certain terms, in particular, the proposed definitions of ''end items,'' ''components'' and ''systems.'' The commenter urged BIS to provide examples, illustrations, charts, or annotations to assist exporters in the uniform application of these terms. This commenter noted that the consequences of which definition applies is important, particularly under the proposed ''specially designed'' definition and with respect to whether something is considered a ''component'' for purposes of License Exception STA eligibility for the ''600 series.'' BIS already addressed some of these concerns by proposing in the June 19 (specially designed) rule a revised definition of ''end item'' that would clarify the relationship between ''end items'' and ''components.'' BIS is also developing a targeted outreach program to support exporters whose items will move from the USML to the CCL and who are less familiar with the EAR. As part of that outreach, BIS also intends to develop decision tools and other types of support information to assist the public in understanding and applying the definitions added or revised in this final rule, similar to the decision tree that was developed and posted on the BIS Web site in 2012 for License Exception STA. The June 19 (specially designed) rule, in particular the lengthy preamble discussion that included numerous examples for how to apply the term ''specially designed,'' is representative of the types of training materials that BIS intends to develop for assisting the public in understanding and applying these other key terms.

In the short-term, there will be some degree of adjustment as the public and the U.S. Government apply these new definitions. BIS is committed to supporting stakeholders during this transition period. These definitions will provide significant benefits by adding more specificity to the EAR for how these terms are defined and used in the CCL. In addition, these terms will play an important role in delineating between items on the USML and on the CCL.

One commenter noted that, in the definition of ''accessories and attachments'' proposed in the July 15 (framework) rule, a ''system'' is addressed separately from an ''end item,'' but the definition of ''end item'' includes systems, and the definition of ''systems'' includes ''end items.'' This commenter believes the implication is that BIS considers ''systems'' as both ''end items'' and elements of ''end items.'' This commenter thought additional explanation or examples would be helpful.

In terms of the definition of ''accessories and attachments'' proposed in the July 15 (framework) rule and re-proposed as separate stand-alone definitions in the June 19 (specially designed) rule, an ''accessory'' or ''attachment'' is not necessary, but enhances the operation of a ''component,'' ''end item'' or ''system.'' The definitions of ''system'' and ''accessories'' and ''attachments'' are not intended to be mutually exclusive. For example, a ''system'' could be made up of a combination of ''accessories.'' If such a ''system'' still met the definition of ''accessories,'' the item would be considered an ''accessory'' as well as a ''system.''

Similarly, the definitions of ''system'' and ''end item'' are not intended to be mutually exclusive. A ''system'' can be an ''end item,'' provided the ''system''

in question also meets the definition of ''end item.'' However, not all ''systems'' will meet the definition of ''end item.'' For example, some ''systems,'' such as landing gear for an aircraft, consist of a combination of ''parts'' and ''components'' that form a portion of a larger ''end item'' (e.g., an aircraft). In other cases, such as a computer system (consisting of a monitor, CPU, keyboard, and mouse), where a ''system'' is a combination of ''end items'' designed, modified, or adapted to operate together to perform a specialized function, the ''system'' itself may also meet the definition of ''end item.''

One commenter suggested that, in the definition of ''system,'' the phrase ''a specialized function'' be changed to ''the function specified in the export control item using the term 'system,' '' because there is no other specialized function which is relevant to export controls.

BIS does not incorporate this suggestion. Defined terms from part 772, such as ''system'' or ''facilities,'' that are used in the ECCN entries are further refined with control parameters included in those ECCNs. For that reason, BIS does not adopt this change.

10. Build-to-Print Technology

This final rule adopts the definition of ''build-to-print technology'' that was proposed in the November 7 (aircraft) rule with a minor non-substantive change to conform to the standard format used in part 772 (i.e., the defined term appears first in italics and is followed with a sentence that begins the definition).

Several commenters suggested broadening the scope of the proposed build-to-print technology definition, and one commenter noted that the proposed definition is not the same as the current ITAR definition. BIS does not accept the comment to broaden the scope of the build-to-print technology definition. Similar to how the term is used in the ITAR, the scope of the EAR definition is meant to be narrow. The suggested broadening of the definition would not be consistent with how the term is defined and used under the ITAR and also would be inconsistent with the policy objectives for the use of this term under the EAR for purposes of the ''600 series.'' Lastly, the EAR and ITAR definitions are slightly different because of the different regulatory terms used; however, the substantive control is identical. As much as possible, a common definition of build-to-print technology is being added to the EAR in this final rule to correspond to the ITAR definition, but both definitions will be tied to the respective regulations.

11. Accessories

This final rule adopts the definition of ''accessories'' that was proposed in the June 19 (specially designed) rule. No comments were submitted on the proposed definition.

12. Attachments

This final rule adopts the definition of ''attachments'' that was proposed in the June 19 (specially designed) rule. No comments were submitted on the proposed definition.

13. End Item

This final rule adopts the definition of ''end item'' that was proposed in the June 19 (specially designed) rule.

Two commenters suggested clarifying the applicability of the end item definition as it relates to integrated circuits (ICs) by adding the phrase ''capable of operating by itself and performing functions independent of any other item.'' The concern was whether an IC would be an end item instead of a component. To further clarify this point, these commenters also suggested adding the term ''computers'' to the illustrative list of end item examples.

BIS does not accept adding the phrase ''capable of operating by itself and performing functions independent of any other item'' because it is not needed because the definition of ''component'' is adequate in its scope to capture ICs. However, to address the concern that ICs might be viewed incorrectly as end items, BIS clarifies here that ICs are classified as ''components'' and not an end item, which should address these two commenters' concern. BIS does accept the suggestion of adding the term ''computers'' to the illustrative list of end item examples.

One commenter suggested adding the phrase ''like electricity'' as an example of another energy source that could be used to place an end item in its operating state. This commenter also suggested adding the term ''fully'' before the phrase operating state for clarity. BIS does not accept these changes because the intent of the definition is clear without these additions.

14. Dual Use

A conforming change is implemented in § 730.6 that was not previously proposed as was described above. To conform to the change to § 730.6, the definition of ''dual use'' in part 772 is also revised by adding the phrase ''and certain munitions items listed on the Wassenaar Arrangement Munitions List (WAML)'' in order to harmonize with the revised description of the scope of the EAR.

XXIV. Part 774—The Commerce Control List

A. Product Group Headings

This rule implements changes proposed in the July 15 (framework) rule to the Product Group A heading by adding the new terms ''end items,'' ''accessories,'' ''attachments,'' and ''parts.'' These changes help with the structural alignment of the CCL and USML by ensuring these terms and control lists' product group headings are used in a consistent way. The July 15 (framework) rule also proposed adding double quotes around the term ''materials'' in Product Group C. After evaluating the terms used in the heading of all the product groups, this rule adds double quotes around the terms ''end items,'' ''equipment,'' ''accessories,'' ''attachments,'' ''parts,'' ''components,'' ''systems,'' ''software,'' ''technology,'' ''production equipment,'' and ''materials'' because these terms are defined in part 772.

B. ECCN 0A919

Under ECCN 0A919, the EAR controls the reexports of certain foreign-made munitions not otherwise subject to the ITAR. The July 15 (framework) rule proposed expanding ECCN 0A919 to also include foreign-made munitions items that incorporate more than 10% ''600 series'' controlled content. The June 21 (transition) rule proposed to further revise ECCN 0A919 to conform to the proposed revisions of the *de minimis* and foreign-produced direct product rules set forth in that proposed rule. The *de minimis* level for ''600 series'' ECCNs is 0% for countries in Country Group D:5 of Supplement No. 1 to part 740 and 25% for all other countries (see § 734.4 of the EAR). The foreign-produced direct product rules for ''600 series'' ECCNs may be found in § 736.2(b)(3) of the EAR.

One commenter stated, ''The definition of ''military commodity'' and the chapeau exclude any item in the ''600 series.'' Thus, a commodity listed in 0A600.a, b, or c. [sic] of 100% foreign manufacture might be decontrolled by the chapeau, and recontrolled by virtue of having more than 10% 600 series parts and components. At a minimum, the text needs to be rewritten to eliminate the conflict and to clarify the intent.'' ECCN 0A919 is not intended to control foreign made ''600 series'' commodities as such. One must apply the characteristics within the Items paragraphs, only to the scope of commodities described in the Heading of the ECCN. The Items paragraphs further define what is caught by the broad description of the heading of

ECCNs; they do not expand the scope of the heading of an ECCN.

One commenter on the June 21 (transition) rule recommended adding ''U.S. origin'' to paragraph d.2. BIS agrees this clarification is helpful and has done so in two places with the Items paragraphs.

One commenter noted that proposed paragraphs .a and .c seem to contradict each other. BIS agrees that the text of the paragraphs in the Items section needs clarification. BIS noticed that the first introductory text was an undesignated paragraph. This rule removes paragraph .a, because it is for the most part the definition of ''military commodities,'' and replaces it with the introductory text, '' ''Military commodities'' having all of the following characteristics:'' The word ''with'' in the introductory text is replaced with ''having'' to conform to Wassenaar Arrangement wording. The definition for ''military commodities,'' from part 772, is added to the Related Definitions section of ECCN 0A919 for the convenience of the reader. Paragraph .b is redesignated as paragraph .a and is revised to read, ''produced and located outside the United States.'' This change was made for two reasons. Some people were not clear that ECCN 0A919 only controls foreign-produced ''military commodities'' that are located outside the United States. Paragraph .c is redesignated as paragraph a.2 and is revised to remove the phrase ''for a reason other than presence in the United States,'' because this phrase made the sentence confusing. Basically, there are three ways a foreign-made ''military commodity'' could be subject to the ITAR: (1) The foreign-made ''military commodity'' contains an ITAR item; (2) The foreign-made ''military commodity'' is a direct product of ITAR technology; and (3) The foreign-made ''military commodity'' is in the United States. If none of the three scenarios exists, the foreign-made item is not subject to the ITAR, but may be subject to the EAR and classified under ECCN 0A919.

One commenter requested clarification about the jurisdiction of ECCN 0A919 commodities that are located in the United States. When a ''military commodity'' is in the United States, it is under the jurisdiction of the Department of State and subject to the ITAR. One commenter disagreed with the whole concept of ECCN 0A919, because the commodity would have one classification (0A919) and jurisdiction (BIS) when outside the United States and another classification and jurisdiction (Department of State's DDTC) when in the United States. BIS has concluded that 0A919 may be complex, but it is necessary for national security reasons. Therefore, BIS does not accept the recommendation to remove ECCN 0A919.

Paragraph .d is redesignated as paragraph a.3 and is revised by adding the word ''Having'' to the beginning of the phrase to conform to Wassenaar Arrangement wording. Paragraph d.1 is redesignated as paragraph a.3.a and is revised by adding ECCNs 6A003.b.3 and b.4.c, because these cameras were added by the publication of the Wassenaar rule on July 2, 2012. These changes were included in the July 15 rule, though prematurely. Paragraph d.2 is redesignated as paragraph a.3.b and is revised by adding the words ''U.S.-origin'' as suggested by a commenter for clarity. Paragraph d.3 is redesignated as paragraph a.3.c and is published as proposed. Double quotes are added around the term ''military commodity'' in the related controls and related definitions sections of ECCN 0A919, because this term is defined in part 772 of the EAR.

C. Aircraft and Related Items ''600 Series'' ECCNs: Establishment of ''600 Series'' ECCNs for Certain Military Aircraft and Related Items in ECCNs 9A610, 9B610, 9C610, 9D610, and 9E610

In the November 7 (aircraft) rule, BIS proposed to control certain military aircraft and related items that the President determines no longer warrant control in USML Category VIII under new ECCNs 9A610, 9B610, 9C610, 9D610, and 9E610. Specifically, the November 7 (aircraft) rule proposed that ECCN 9A610 would control the following: ''end items'' in paragraphs .a through .k (while reserving paragraphs .b through .e); Unmanned Aerial Vehicle (UAV)-related items identified on the Missile Technology Control Regime (MTCR) Annex in paragraphs .l through .n; ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for commodities in paragraphs .a through .k or defense articles in USML Category VIII in paragraph .x; and commodities ''specially designed'' for a commodity in 9A610 or defense article in USML Category VIII and warranting less strict controls because of little or no military significance in paragraph .y. ECCN 9A610 would also include items currently controlled under ECCN 9A018 paragraphs .a, .c, .d, .e, and .f.

The November 7 (aircraft) rule also proposed the following related ECCNs. ECCN 9B610 would control test, inspection, and production equipment and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 9A610 or USML Category VIII. ECCN 9C610 would control materials ''specially designed'' for aircraft and related commodities controlled by ECCN 9A610 that are not specified elsewhere on the CCL, such as in CCL Category 1, or on the USML. ECCN 9D610 would control software ''specially designed'' for commodities in ECCNs 9A610, 9B610, or 9C610. Finally, the November 7 (aircraft) rule proposed that ECCN 9E610 would control technology that is required for commodities in ECCNs 9A610, 9B610, or 9C610, as well as for software in ECCN 9D610.

This rule adopts these new ECCNs with the changes described below.

1. Review of Public Comments Related to ''600 Series'' for Certain Military Aircraft and Related Items

In response to the November 7 (aircraft) rule, BIS received a number of comments on the proposed ''600 series'' for military aircraft, and these comments are addressed below in this section. BIS also received comments in response to the November 7 (aircraft) rule that pertain to other aspects of ECR, such as grandfathering existing ITAR authorizations, ITAR exemptions versus EAR license exceptions, the definition of ''specially designed,'' and various licensing issues. These comments are addressed in this final rule under the applicable topic to which they relate. Finally, additional comments in response to the November 7 (aircraft) rule addressed issues outside of the scope of ECR, such as recalibrating controls on encryption and revisiting the proposed intra-company transfer license exception. As these comments are outside of the scope of the proposed rules addressed under this final rule, they are not addressed herein.

2. Comments Regarding ECCN 9A610

Two commenters submitted comments that any UAV that is specially designed for a military application, is not in Category I of the MTCR Annex, and does not include any specially designed capability covered by the USML, should be transferred to the CCL under either ECCN 9A610 or 9A012. In addition, two commenters stated that the November 7 (aircraft) rule did not specifically address whether ECCN 9A012 would be eliminated in the same manner as ECCN 9A018.

The Department of Defense-led review of USML Category VIII found that technical capabilities for UAVs do not provide the flexibility to differentiate as

finely as the comment suggested between critical and non-critical military systems. Consequently, the November 7 (aircraft) rule did not propose to include UAVs in ECCN 9A610, and this final rule makes no changes to that proposal. With respect to ECCN 9A012, BIS did not propose any amendments in the November 7 (aircraft) rule to 9A012, including removal of the ECCN, because 9A012 would continue to control UAVs and related items that are not enumerated on USML Category VIII and are not ''specially designed'' for a military use.

One commenter suggested that Note 1 to ECCN 9A610.a should be revised to make clear that the requirements of pre-1956 manufacture applies only to ''unarmed military aircraft,'' and not to other types of aircraft listed in the note. Specifically, the commenter proposed that unarmed military aircraft be moved into a new sentence as follows: ''Other unarmed military aircraft, regardless of origin or designation, manufactured before 1956 and unmodified since manufacture are also included in the term 'military aircraft'.''

BIS accepts this recommendation in part. A comma has been added after ''lighter than air aircraft'' to more clearly separate ''unarmed military aircraft'' from the rest of the series of items so that the pre-1956 manufacture applies only to ''unarmed military aircraft.'' The suggested sentence is not adopted as BIS believes that the change made to the sentence addresses the concern.

In response to both the Department of State's proposed rule for USML Category VIII and BIS's November 7 (aircraft) rule, one commenter recommended that bearings used in the landing wheels of stealth aircraft should be moved from proposed USML Category VIII(h)(1) to the CCL. In support of this recommendation, the commenter stated that these bearings do not relate to stealth or combat capabilities of the aircraft.

Both the State Department's and the Commerce Department's proposed rules contemplated that parts, components, accessories, attachments, and equipment ''specially designed'' for enumerated aircraft possessing low observable characteristics would remain subject to the ITAR, and that such parts, components, accessories, attachments and equipment were retained on the USML for reasons beyond stealth capability. Neither rule stated that all parts merely ''used'' on those enumerated aircraft would be subject to the ITAR. Parts that are not ''specially designed'' but rather common to the military aircraft enumerated in Category VII(h)(1) and to other military aircraft and that are not enumerated on the USML or to civilian aircraft would be subject to the EAR. BIS believes that no change to the proposed rule is needed to clarify this point.

One commenter believed that some ground equipment falling under ECCN 9A610.f does not warrant NS and RS controls. The commenter recommended that the beginning of paragraph .y read as follows: ''Specific 'parts,' 'components,' 'accessories and attachments' and associated ground support equipment 'specially designed' for a commodity subject to control in this ECCN or a defense article in USML Category VIII * * *'' Further, the commenter suggested that the following ground support equipment be added to 9A610.y: blade positioning poles; dollies and carts; hand tools; inlet and other covers; jacks; tow bars; and tie down straps, lines, rings, and related hardware.

The Departments of Defense, State, and Commerce reviewed the specified ground equipment for inclusion in 9A610.y and found that such items do not in all cases merit inclusion in the .y paragraph. Thus, the interagency review found that such items are adequately described under the .x paragraph as parts, components, accessories, or attachments for ground equipment in 9A610.f and that the ''specially designed'' parameter sufficiently limits excessive control of such items.

One commenter stated that ECCN 9A610.h would cover ''canopies,'' but the November 7 (aircraft) rule did not clarify whether 9A610 would also cover other types of windows or transparencies, such as door windows, cabin windows, or lenses, etc., regardless of their special characteristics (e.g., ballistic protection or electromagnetic interference). The commenter further suggested that transparencies for aircraft, other than canopies, should be identified in 9A610.y.

Proposed 9A610.h was intended to apply to parachute canopies, which are not related to windows and other transparencies used in aircraft. Nevertheless, the Departments of Defense, State, and Commerce reviewed transparencies for inclusion in 9A610.y and found that such items do not merit inclusion in the .y paragraph. Rather, such items are adequately controlled depending on whether they are ''specially designed'' for defense articles in USML Category VIII or commodities in 9A610.a. Consequently, no change has been made as a result of this comment.

Two commenters provided separate lists of commodities that they believed warranted control under the .y paragraph due to little or no military significance. These commodities included the following: air vents and outlets; cabin doors and door seals; crew and cabin seats; cargo rings; drain lines; fire extinguishers; flame and smoke/CO_2 detectors; heating, air conditioning, and air management equipment; helicopter control mixers; junction boxes; lithium-ion batteries and battery cells; map cases; ram air turbines; reservoirs; steps for crew and passenger entry and exit; windows and window seals; fasteners; light bulbs, fixtures, and lenses; safety items used when the aircraft is on the ground, known as ''red gear'' (e.g., safety pins with remove-before-flight streamers, engine outlet and inlet covers, grounding wires, etc.); flightline ground-handling/support equipment (e.g., tow vehicles and tow bars); lifts, jacks, ladders, and stands; power, hydraulic, heating, and cooling carts; ground crew-to-pilot communication gear; intermediate and depot-level support equipment for structural and hydraulic test and maintenance; non-Radar Cross Section (RCS) paints, coatings, primers, and application equipment; access doors and hatches; cargo systems and furnishings; fittings; light plates; insulation blankets; intercostals and gussets; floor panels and floor structure; seat tracks; shims; wire bundles; and labels, placards, name plates, and signs.

The Departments of Defense, State, and Commerce reviewed the suggested items and agreed to add fire extinguishers, flame and smoke/CO_2 detectors, and map cases to ECCN 9A610.y. Many of the other items, such as fasteners, were not added to 9A610.y because the agencies believe that the definition of ''specially designed'' would preclude many of these items from being classified under ECCN 9A610.x. (Fasteners are further addressed in the response immediately below.) Finally, other items suggested do not, in all cases, warrant control under the AT-only .y controls. Thus, they were not added to the list.

In addition to recommending that fasteners be included in the .y paragraph, two commenters addressed further concerns regarding fasteners. Specifically, one commenter stated that fasteners designed for military aircraft are often special combinations of characteristics that are widely used in fasteners for civil applications. In addition, the commenter stated that multipart fasteners and fastening systems for military aircraft are often interchangeable with those for civilian aircraft. For these reasons, the commenter recommended that fasteners

should be considered EAR99 or 9A991.d, but not 9A610.x. Another commenter supported the idea that the USML should control critical fasteners that contribute to the properties of key U.S. origin aircraft that have low observable features or characteristics, while recognizing that other types of fasteners are truly commercial in nature and require little or no export control.

As discussed under the section on ''specially designed,'' certain fasteners are precluded from being classified under ECCN 9A610.x due to paragraph (b)(2) of the definition of ''specially designed,'' and multipart fasteners may be eligible for the (b)(3) exclusion in the definition. If the fasteners were determined to be in an ECCN paragraph that does not contain ''specially designed'' as a control parameter or as EAR99 items under a prior CJ, they would also be precluded from being ''specially designed'' under 9A610.x. Finally, in light of the proposed addition of paragraph (b)(1) to the definition of ''specially designed,'' organizations may submit a CCATS pursuant to new § 748.3(e) to request that a fastener be removed from control under 9A610.x if the fastener otherwise meets the definition of ''specially designed.''

One commenter stated the understanding that only forgings ''specially designed'' for a specific list of U.S. origin aircraft that have low observable features or characteristics or U.S. Government technology demonstrators will be subject to continued control on the USML and that all other forgings ''specially designed'' for military aircraft would be on the CCL.

Forgings would only be controlled on the CCL if the commodity for which they are ''specially designed'' is also on the CCL. Some parts and components for military aircraft are specifically enumerated in USML Category VIII(h). For many of the entries in Category VIII(h), parts and components ''specially designed'' therefor are also controlled. Consequently, forgings ''specially designed'' for such items are also controlled under USML Category VIII(h).

One commenter stated that castings, forgings, and other unfinished products for parts in 9A610.x are themselves 9A610.x if they are clearly identifiable by material composition, material, geometry, or function as controlled by 9A610.x. The commenter further stated support that this language is consistent with WAML Category 16 when they are identifiable for material composition, geometry, or function. In addition, the commenter stated that although many forgings have a part number on them, they should not be on the CCL based on that part number unless the forging itself is identifiable as that part by material composition, geometry, or function. BIS does not agree with the commenter's interpretation of the regulations. ''Note 1'' to ECCN 9A610.x states that forgings, castings, and other unfinished products, such as extrusions and machined bodies, are also controlled by 9A610.x if they ''have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A610.x.'' The note does not refer to part numbers. Thus, whether a forging or casting is stamped with a part number is not relevant to determining whether it is controlled by 9A610.x.

3. Additional Changes Made to ECCN 9A610

BIS is amending proposed ECCN 9A610 to make conforming changes due to the finalization of certain proposed rules published after the November 7 (aircraft) rule. The Related Controls paragraph is amended to reflect the revised *de minimis* level for ''600 series'' items, as proposed in the June 21 (transition) rule and finalized in this rule. In addition, references using the defined term ''accessories and attachments'' have been changed to ''accessories'' and ''attachments'' to reflect the separation of those defined terms, as proposed in the June 19 (specially designed) rule and finalized in this rule.

BIS has added the phrase ''mechanical properties'' to the forgings and castings note to 9A610.x because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a forging, casting, or unfinished product may have been altered specifically for a 9A610.x part or component. BIS believes that the omission of ''mechanical properties'' from the list proposed in the November 7 (aircraft) rule was an error, and it is being corrected in this rule.

In the November 7 (aircraft) rule, Note 1 to 9A610.a was generally intended to exclude all military aircraft manufactured before 1956 that do not have weapons from being controlled under 9A610. In order to make this concept more clear and to conform with the current text of the WAML, BIS is revising Note 1 and adding a Note 2 to 9A610.a to clarify that military aircraft manufactured before 1946 and meeting the parameters described in Note 2 are not controlled under 9A610. Further, to address such aircraft manufactured from 1946 to 1955, BIS is adding a new 9A610.y.29 for military aircraft manufactured during that timeframe that also meet the parameters described in that provision. BIS is making these changes to improve clarity and to comply with multilateral regime requirements.

BIS is also revising 9A610.f, .g, and .i to conform to the WAML. Also, BIS is renumbering entries within the Items paragraph to allow for ease of future revisions to the ECCN. These are not substantive revisions to the November 7 (aircraft) rule.

4. Comments Regarding ECCN 9B610

Two commenters believed that the proposed text for ECCN 9B610 is too open-ended and appears to add additional control to hardware. They recommended revising the heading of the ECCN to read as follows: ''Test, inspection and production 'equipment' 'specially designed' for the 'development' or 'production' of commodities enumerated in ECCN 9A610 and having embedded technology that is exclusively or predominately used in the 'development' or 'production' of the enumerated end item.'' BIS believes that the use of ''specially designed'' is sufficiently limiting to preclude ECCN 9B610 from being an open-ended control. Therefore, no change has been made to 9B610 as a result of this comment.

One commenter stated that all entries in 9B610.a through .y list the limiting text ''specially designed'' with the exception of 9B610.b for environmental test facilities. Under 9B610.b, only the word ''designed'' is used. To avoid over-controlling items, the commenter suggested using ''specially designed'' in 9B610.b. BIS accepts this recommendation, and has amended 9B610.b to replace ''designed'' with ''specially designed.''

BIS is also making correctional and clarifying changes to this ECCN. BIS is correcting the scope of controls for 9B610.a to read: ''Test, inspection, and production 'equipment' 'specially designed' for the 'production, 'development,' repair, overhaul or refurbishment of commodities . . .'' This change conforms to the text proposed in 9B619.a. Also, BIS is adding a reference to new USML Category VIII(h)(i) in the Related Controls paragraph.

5. Comments Regarding ECCNS 9D610, 9E610, and Availability of License Exception STA

As previously discussed under the section on License Exception STA, BIS

is removing proposed Supplement No. 4 to part 740 to move restrictions on the use of License Exception STA for ''600 series'' software and technology to the STA paragraph in the License Exceptions section of the applicable ''600 series'' ECCN. To effect this change for ECCNs 9D610 and 9E610, BIS has revised the Items paragraphs of those ECCNs to specifically name the restricted software or technology in the ECCN itself.

Following this new framework, ECCN 9D610.b now controls software for the ''development'' or ''production'' of items previously described in paragraphs (a)(1) through (a)(15) in proposed Supplement No. 4 to part 740. While this revision does not substantively affect the reasons for control applying to the software at issue (or any software controlled under 9D610), this change more positively enumerates this software in 9D610.b. To correspond with this change, the following additional revisions have been made to 9D610: revised descriptions of the applicability of the reasons for control to the specific paragraphs within 9D610, revised description of eligibility under the STA paragraph in the License Exceptions section of 9D610 to add that paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for software described in 9D610.b, and removal of the note to the License Exceptions section.

For ECCN 9E610, 9E610.b now controls ''technology'' (other than ''build-to-print technology'') ''required'' for the ''development'' or ''production'' of any of the items previously described in paragraphs (a)(1) through (a)(15) in proposed Supplement No. 4 to part 740. As with 9D610, this revision does not substantively affect the reasons for control that apply to such technology. To correspond with this change, the following additional revisions have been made to 9E610: revised descriptions of the applicability of the reasons for control to the specific paragraphs within 9E610, revised description of eligibility under the STA paragraph in the License Exceptions section of 9E610 to add that paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for software described in 9E610.b., removal of the note to the License Exceptions section, and an insertion of a note to paragraph .a with respect to ''build-to-print technology'' for the ''production'' of items in paragraphs b.1 through b.15.

In addition to inserting 9D610.b, BIS is also not finalizing 9D610.b and .c that were proposed in the November 7 (aircraft) rule to control software related to commodities controlled for MT reasons under ECCNs 9A610 and 9B610. BIS is making this change to conform with the revised applicability of the MT reason for control to ECCN 9D610, which simplifies the description of software subject to MT controls.

BIS did receive comments pertaining to the specific software and technology that was proposed to be restricted from use of License Exception STA under the November 7 (aircraft) rule. Descriptions of the comments with BIS's responses are below.

One commenter recommended that the words ''except for Military Commercial Derivative Aircraft'' be deleted from paragraphs (a)(6) and (a)(7) of Supplement No. 4 to part 740. The commenter reasoned that this exclusion refers to technology in ECCN 9E003, and could thus result in confusion that 9E003 technology is subject to the limitations on the use of STA and GOV described in Supplement No. 4. BIS does not accept this recommendation. The reference to military commercial derivative aircraft is a carve-out of the STA license exception and is not limited to ECCN 9E003.

One commenter stated that the use of an aircraft weight threshold (i.e., 21,000 pounds) to determine which landing gear, parts, and components are subject to the restrictions in paragraph (a)(7) in Supplement No. 4 to part 740 is impractical. Instead, the commenter recommended that BIS specifically identify those categories of aircraft that would be subject to paragraph (a)(7). BIS does not accept this recommendation. Using the categories of aircraft as the parameter to identify the software and technology to be excluded from STA and most GOV eligibility would be impractical. This would lead to an exhaustive list that would be constantly changing based on new developments.

Two commenters expressed concerns that the scope of software under 9D610 and technology under 9E610 that would be restricted from STA eligibility is too broad. They commented that the restriction would apply to nearly every part and component on an aircraft platform, that the items affected are common to commercial aircraft for which technology and software can already be exported without a license, and that many STA-eligible countries already participate in the development and production of the items at issue and have comparable indigenous software and technology. In addition, one of the commenters felt that this framework makes the use of STA more complex. The restriction on the use of License Exception STA applies to software and technology related to parts and components ''specially designed'' for military aircraft controlled under USML Category VIII or ECCN 9A610. While there may be similarities between these items and commercial equivalents, the interagency review identified these items as warranting closer review. In addition, the use of License Exception STA for ''600 series'' items is to support military activities rather than development activities. As a result, parts and components may be exported or reexported under License Exception STA, but certain software and technology related to the ''development'' or ''production'' of the specified parts and components may not be exported or reexported under STA. Also, as previously described, BIS is changing the STA framework to make it less complex.

No changes have been made to reduce the scope of aircraft software or technology subject to the restriction on the use of License Exception STA. However, as described in section XXIV.C.6, BIS is correcting 9D610 and 9E610, which impacts the scope of software and technology, respectively, controlled under those ECCNs. Also, as previously mentioned, BIS is removing proposed Supplement No. 4 to part 740 to make the framework on STA restrictions for ''600 series'' items less complicated.

One commenter objected to the terminology ''types of parts and components'' in paragraph (a) of Supplement No. 4 to part 740 (i.e., ''License Exception STA may not be used . . . [for] 'software' or . . . 'technology' for the 'development' or 'production' of any of the types of 'parts' or 'components' listed below.''). The commenter stated that this wording implies that other parts and components are captured, and thus ''types of'' should be deleted.

This final rule does remove the use of ''types of'' by not finalizing proposed Supplement No. 4 to part 740 and moving the description of the items in that supplement to ECCNs 9D610 or 9E610. However, this change was made to simplify License Exception STA. The use of the term ''types of'' was not intended to control every part and component of an aircraft, but rather the parts and components with similar functionality.

6. Additional Changes Made to ECCNs 9D610 and 9E610

BIS is correcting 9D610 and 9E610 to remove software ''specially designed'' for the ''development'' or ''production'' of fuel cells that are ''specially designed'' for use in UAV or Lighter-than-Air-Vehicles. Such fuel cells will

be enumerated in USML Category VIII, so related software should also be controlled under the ITAR rather than the CCL.

BIS is also amending ECCNs 9D610 and 9E610 to make conforming changes due to the finalization of certain proposed rules published after the November 7 (aircraft) rule. The Related Controls paragraph of 9D610 is amended to reflect the revised *de minimis* levels for ''600 series'' items, as proposed in the transition rule and finalized in this rule. The Related Controls paragraph of 9E610 is also revised to reflect the revised *de minimis* levels, but this final rule removes entirely the reference to ECCN 0A919 foreign-made ''military commodities'' because technology would not be considered for conducting a *de minimis* calculation for a commodity. In addition, to improve clarity and make corrections, this rule merges 9D610.y.1 and y.2 into 9D610.y, merges 9E610.y.1 and y.2 into 9E610.y, and inserts the descriptor ''software'' in 9E610.y since that entry applies to certain technology related to 9D610 software. Finally, after interagency review, on the correct scope of intended controls BIS is removing installation, repair, overhaul, and refurbishing ''software'' from 9D610; and adding refurbishing ''technology'' to 9E610.y.

D. Gas Turbine Engines and Related Items ''600 Series'' ECCNs: Establishment of ''600 Series'' ECCNs for Certain Military Gas Turbine Engines and Related Items in ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619

In the December 6 (gas turbine engines) rule, BIS proposed to control certain military gas turbine engines and related items that the President determines no longer warrant control in USML Category VIII (or new Category XIX) under new ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619. These ECCNs were proposed in conjunction with the Department of State's proposal to create USML Category XIX under the proposed rule, *Amendment to the International Traffic in Arms Regulations: Establishment of U.S. Munitions List Category XIX for Gas Turbine Engines,* (12/06/11, 76 FR 76097) (RIN 1400–AC98). Specifically, the December 6 (gas turbine engines) rule proposed that ECCN 9A619.a through .d would control, while reserving paragraphs .e through .w, gas turbine engines ''specially designed'' for military use that would not be controlled under proposed USML Category XIX, digital engine controls ''specially designed'' for gas turbine engines in ECCN 9A619, hot section components and related cooled components ''specially designed'' for gas turbine engines in ECCN 9A619, and engine monitoring systems for gas turbine engines and components in ECCN 9A619. ECCN 9A619.x would consist of ''parts,'' ''components,'' ''accessories and attachments'' (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are ''specially designed'' for a commodity in ECCN 9A619 (other than ECCN 9A619.c) or a defense article in proposed USML Category XIX and not elsewhere specified in the CCL or on the USML. Paragraph .y would consist of eight specific types of commodities that, if ''specially designed'' for a commodity subject to control in ECCN 9A619 or a defense article in proposed USML Category XIX, warrant less strict controls because they have little military significance.

The December 6 (gas turbine engines) rule also proposed the following related ECCNs. ECCN 9B619 would controls test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 9A619 or proposed USML Category XIX. One specific item, a bearing puller, was enumerated in the proposed .y paragraph of 9B619. ECCN 9C619 would control materials ''specially designed'' for commodities controlled by 9A619 not elsewhere specified in the CCL or on the USML. ECCN 9D619 would control software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of military gas turbine engines and related commodities controlled by 9A619. Finally, the December 6 (gas turbine engines) rule proposed that ECCN 9E619 would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.

This rule adopts these new ECCNs with the changes described below.

1. Review of Public Comments Related to ''600 Series'' for Certain Military Gas Turbine Engines and Related Items

In response to the December 6 (gas turbine engines) rule, BIS received a number of comments on the proposed ''600 series'' for military gas turbine engines, and these comments are addressed below in this section. BIS also received comments in response to the December 6 (gas turbine engines) rule that pertain to other aspects of ECR, such as the *de minimis* threshold for ''600 series'' items, grandfathering existing ITAR authorizations, ITAR exemptions versus EAR license exceptions, etc. These comments are addressed in this final rule under the applicable topic to which they relate. Finally, additional comments addressed issues outside the scope of ECR, such as program licensing and the proposed intra-company transfer license exception. As these comments are outside of the scope of the proposed rules addressed under this final rule, they are not addressed herein.

2. Comments Regarding Separate USML Category and ''600 Series'' ECCNs for Gas Turbine Engines

One commenter stated that gas turbine engines and associated equipment should be controlled under the same USML category that controls the end-item platform and that delineating between the end-item platform and engine components may be difficult in some cases. In addition, the commenter stated that if a new USML category is created for gas turbine engines, then the category should include the existing USML Category VIII note regarding Section 17(c) of the Export Administration Act (EAA), as amended. The commenter believed that omission of the note could be interpreted to mean that certification by the Federal Aviation Administration would no longer be applicable to determine licensing jurisdiction for aircraft engines.

The Departments of Defense, State, and Commerce believe that gas turbine engines are sufficiently different to warrant a separate USML category and separate ''600 series'' ECCNs, so BIS is maintaining the use of the 9Y619 series for controlling certain military gas turbine engines. With respect to the note in USML Category VIII regarding Section 17(c) of the EAA, the agencies believe that any concerns with the removal of the note would be adequately addressed by the definition of ''specially designed.'' Thus, if an engine or engine part or component would not be subject to the ITAR as a result of the application of the note to USML Category VIII (the ''17(c)'' note) then that engine or part, by virtue of the application of the definition of ''specially designed,'' would not be subject to the controls of 9A619.

3. Comments Regarding ECCN 9A619

For the Related Controls paragraph of ECCN 9A619, one commenter stated

that the phrase ''directly related'' should be replaced with ''required'' in the sentence ''[m]ilitary gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations.''

BIS does not accept this recommendation as the phrase ''directly related'' is intended to correlate with the wording used in USML Category XIX. The reference to USML Category XIX in the Related Controls does not impose any requirements independent of those in USML Category XIX, so there is no need to define that term for purposes of the EAR. Any interpretation of that term must be consistent with the requirements of the ITAR.

One commenter pointed out potential overlapping controls with ECCN 9A619.a and proposed USML Category XIX. ECCN 9A619.a controls military gas turbine engines ''specially designed'' for a military use that are not controlled in USML Category XIX(a), (b), or (d). However, proposed USML Category XIX(c) also controls such engines. The commenter recommended that 9A619.a be revised to exclude engines enumerated in USML Category XIX(c), in addition to XIX(a), (b), and (d). BIS accepts this recommendation and has included USML Category XIX(c) along with the reference to XIX(a), (b), and (d) in ECCN 9A619.a.

Two commenters stated that the definition of ''military gas turbine engines'' used in ECCN 9A619.a should be added to § 772.1 of the EAR and to the USML. BIS does not accept the recommendation to add ''military gas turbine engines'' to § 772.1 as the text was intended to provide objective criteria by which to determine jurisdiction and classification rather than to provide a definition.

Four commenters raised several concerns regarding the control of hot section components under proposed ECCN 9A619.c. The commenters believed that 9A619.c would be a significant expansion of controls for such items as many components would move to the USML and be considered significant military equipment under the ITAR. Further, one commenter requested confirmation that the listed hot section components are the only hot section components controlled. Two commenters recommended that the definition of hot section components be consistent with the current USML definition, which was published by DDTC in 2008. In addition, one commenter recommended that 9A619.c be split into two parts as follows—(i) hot section parts and components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) ''specially designed'' for gas turbine engines controlled in this ECCN 9A619; (ii) uncooled turbine and exhaust system components not specified in 9A619.c.1 (i.e., uncooled intermediate and low turbine vanes, blades, disks, and ''tip shrouds;'' exhaust liners, tail cones, and nozzles) for engines controlled in this ECCN 9A619 or in USML XIX, except for engines controlled by USML XIX(f)(1). The commenter further recommended that the description of items in 9A619.c was redundant in identifying subsets of parts already more broadly described and that proposed USML Category XIX(f)(2) contained a reference to ''combustor shells'' whereas proposed 9A619.c did not.

When reviewing gas turbine engines and related items, the Departments of Defense, State, and Commerce did not intend to move hot section parts and components currently controlled on the CCL to the USML. To address this concern and others raised with regard to proposed 9A619.c, BIS is revising 9A619.c and adding two new paragraphs .d and .e. 9A619.c controls hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) ''specially designed'' for gas turbine engines controlled in 9A619.a. ECCN 9A619.d controls uncooled turbine blades, vanes, disks, and shrouds ''specially designed'' for gas turbine engines controlled in 9A619.a. ECCN 9A619.e controls combustor cowls, diffusers, domes, and shells ''specially designed'' for gas turbine engines controlled in 9A619.a. Engine monitoring systems previously proposed for control under 9A619.d are being redesignated as 9A619.f.

One commenter stated that 9A619.d (now redesignated as 9A619.f) should include a definition for ''engine monitoring systems'' controlled under that entry. BIS does not accept this recommendation. Engine monitoring systems are intended to reflect industry standard terminology. BIS is, however, clarifying the parenthetical description in this entry to better identify those engine monitoring systems controlled under this ECCN.

One commenter recommended that pressure sensors, thermocouples, and wire-harnesses should be considered as parts and components excluded from the ''specially designed'' definition. Alternatively, if not excluded, then the commenter stated that such items should be controlled under ECCN 9A619.y. In addition, the commenter recommended that speed sensors, actuators, electro-hydraulic servo valves, fuel flow meters, fuel filters, oil filters, air actuated control valves, and fuel actuated control valves also be controlled under 9A619.y. BIS has determined that such items do not, in all cases, meet the standards for being controlled in a .y control. Thus, to the extent they are ''specially designed'' for a military aircraft engine controlled in either 9A619.a or USML Category XIX(a), they would be controlled by 9A619.x. BIS notes that this control is materially different than these items' current controls in USML Category VIII(h) and that it substantially furthers the national security and defense industrial base objectives described above.

4. Additional Changes Made to ECCN 9A619

BIS is also amending ECCN 9A619 to make conforming changes due to the finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph is amended to reflect the revised *de minimis* level for ''600 series'' items, as proposed in the June 21 (transition) rule and finalized in this rule. In addition, references using the defined term ''accessories and attachments'' have been changed to ''accessories'' and ''attachments'' to reflect the separation of those defined terms, as proposed in the June 19 ''specially designed'' rule and finalized in this rule. Finally, the word ''paragraphs'' has been removed from 9A619.a, and the note to 9A619.a has been amended to reflect the current status of the reform initiative. BIS has not yet published final rules that would create ECCNs 0A606 or 8A609 for vehicles and vessels, respectively. Consequently, BIS is revising the note to make clear that those ECCNs are still proposed and do not currently exist in the EAR.

BIS is clarifying that 9A619.d applies to ''tip shrouds'' rather than just ''shrouds.'' Also, BIS has added the phrase ''mechanical properties'' to the forgings and castings notes to 9A619.e and 9A619.x because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a

forging, casting, or unfinished product may have been altered specifically for a 9A619.x part or component. BIS believes that the omission of ''mechanical properties'' from the list proposed in the December 6 (gas turbine engines) rule was an error, and it is being corrected in this rule.

5. Comments Regarding ECCNs 9B619 and 9C619

One commenter stated that the Unit paragraphs in the List of Items Controlled sections of ECCNs 9B619 and 9C619 should contain a unit of measure and recommended that ''$ value'' be used. BIS concurs with the comment, and ECCNs 9B619 and 9C619 have been revised accordingly.

One commenter recommended that ECCN 9B619.y be revised to apply to specific test, inspection, and production equipment ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in 9A619.y, rather than 9A619. BIS does not accept this recommendation as items specifically enumerated in the .y paragraph of 9B619 are not intended to be limited to those items ''specially designed'' for the ''production'' or ''development'' of items identified in the .y paragraph of 9A619.

6. Additional Changes Made to ECCNs 9B619 and 9C619

BIS is also amending ECCNs 9B619 and 9C619 to make the following conforming changes due to the finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph of 9C619 is amended to reflect the revised *de minimis* levels for ''600 series'' items, as proposed in the June 21 (transition) rule and finalized in this rule. In addition, references in 9B619 using the defined term ''accessories and attachments'' have been changed to ''accessories'' and ''attachments'' to reflect the separation of those defined terms, as proposed in the June 19 (specially designed) rule and finalized in this rule.

7. Comments Regarding ECCNs 9D619, 9E619, and Availability of License Exceptions STA and GOV

One commenter raised concerns with the wording used in the Related Controls paragraphs of ECCNs 9D619 and 9E619. The December 6 (gas turbine engines) rule provides a reference for technical data or software directly related to articles enumerated in proposed USML Category XIX. Rather than using ''directly related to,'' the commenter proposed using '' 'required' to achieve the military functionality.'' BIS does not accept this recommendation as this wording was intended to track the text of proposed USML Category XIX(g). Interpreting ''directly related to'' in Category XIX(g) is an issue for the ITAR and not the EAR.

For the NS and RS controls in ECCN 9E619, one commenter recommended that ''9D619.y'' be added to the list of 9Y619 items that are excepted from the NS or RS control. BIS accepts this recommendation, and 9E619 has been revised accordingly to make this correction. In addition, BIS has inserted the word ''software'' to the description of items excepted from the NS or RS control.

One commenter stated in response to the December 6 (gas turbine engines) rule that the proposed Supplement No. 4 to part 740 would create such complexity that exporters would seek licenses to avoid determining whether License Exceptions STA and GOV are available. The commenter further noted the complexity in having two separate restrictions varying with respect to ''build-to-print technology'' in proposed paragraphs (b)(1) and (b)(2) in that supplement.

BIS understands concerns with the complexity in navigating the proposed rule to determine if License Exception STA and portions of License Exception GOV are available for software and technology related to military gas turbine engines. However, BIS believes drawing such distinctions in availability to use STA and GOV is necessary to allow those license exceptions to be used for some portion of the software and technology at issue. Otherwise, drawing a brighter line could result in no software and technology related to military gas turbine engines being eligible for License Exceptions STA and portions of License Exception GOV. However, as discussed previously, BIS is removing proposed Supplement No. 4 to part 740, which will leave the majority of the information necessary to determine whether STA and portions of GOV are available to the applicable ''600 series'' ECCN. In this case, ECCN 9D619 has been revised to move the list of items in (b)(1)(i) through (ix) and (b)(2)(i) through (vii) in Supplement No. 4 to part 740 to 9D619.b. Thus, 9D619.b would control software ''specially designed'' for the ''development'' or ''production'' of the items previously described in (b)(1)(i) through (ix) and (b)(2)(i) through (vii) of Supplement No. 4 to part 740. The STA paragraph in the License Exceptions section of the ECCN has been revised to read that paragraphs (c)(1) and (c)(2) of STA may not be used for 9D619.b, and the License Exceptions Note has been removed. Paragraph (c)(1) of STA would still be available for 9D619.a software. Similar text with respect to use of GOV for 9D619 has also been added to § 740.11. It is important to note that the revisions to 9D619 do not substantively change the license requirements proposed in the December 6 (gas turbine engines) rule. Therefore, the reasons for control have been revised to reflect the changes to the Items paragraph, and a parenthetical has been added to 9D619.a to exclude software in 9D619.b from 9D619.a.

In addition, ECCN 9E619 has been revised to move the list of items in (b)(1)(i) through (ix) in Supplement No. 4 to part 740 to Items paragraph .b. Thus, 9E619.b would control technology, other than ''build-to-print technology,'' ''required'' for the ''development'' or ''production'' of the items previously described in (b)(1)(i) through (ix) of Supplement No. 4. As reflected in the new note after Items paragraph .a, ''build-to-print technology'' ''required'' for the ''production'' of items described in paragraphs .b.1 through b.9 in 9E619 is classified under 9E619.a. To correspond to this change, the STA paragraph in the License Exceptions section is revised to read that paragraph (c)(1) of STA may not be used for 9E619.b. This revision does not prohibit the use of paragraph (c)(1) of STA for 9E619.a, which includes ''build-to-print technology'' for items described in 9E619.b.1 through b.9.

Further, BIS is moving the items previously described in paragraphs (b)(2)(i) through (vii) of Supplement No. 4 to part 740 to Items paragraph .c. Thus, 9E619.c would control technology required for the ''development'' or ''production'' of any of the items previously in (b)(2)(i) through (vii) of Supplement No. 4. To correspond to this change, the STA paragraph in the License Exceptions section of 9E619 has been revised to read that paragraph (c)(1) of STA may be used with technology in 9E619.c, which includes ''build-to-print technology.'' BIS has also revised the STA paragraph to provide that paragraph (c)(2) of STA is not available any technology controlled in 9E619.

As with 9D619, these revisions to 9E619 do not substantively change the license requirements proposed in the December 6 (gas turbine engines) rule. As a result, the reasons for control have been revised to reflect the changes to the Items paragraph, and a parenthetical has been added to 9E619.a to exclude technology in 9E619.b and .c from falling under 9E619.a.

BIS also received comments raising concerns over the software and technology in ECCNs 9D619 and 9E619 that were proposed to be subject to the restrictions described in proposed Supplement No. 4 to part 740. One commenter stated that the same restrictions imposed on significant military equipment under the ITAR should not be imposed on items not deemed to be of substantial military utility or capability when controlled as ''600 series'' items on the CCL. As a result, the items identified in paragraphs (b)(2)(i) through (iii) and (b)(2)(vii) of Supplement No. 4 to part 740 should be moved to paragraph (b)(1) of Supplement No. 4, which would make ''build-to-print technology'' for such items eligible for License Exceptions STA and GOV. BIS does not accept this recommendation. Based on the results of the Defense Department-led review of the USML, it was determined that the software or technology used to produce or develop some types of parts and components is more sensitive than the finished parts and components themselves.

Rather than splitting the jurisdiction between the technology (as ITAR controlled) and the parts and components (as EAR controlled), BIS decided to keep the jurisdictional status the same but to impose ITAR-like worldwide licensing obligations on the technology. This approach satisfies the Government's objective of having visibility in to the export of such technology even for use by close allies while allowing for the more efficient flow of parts and components to close allies and the industry's objective of a control structure where both the parts/components and related technology are subject to the same set of regulations.

One commenter stated that development and production software and technology for items described in paragraph (b)(2) of Supplement No. 4 to part 740 are similar to, and in some cases, less sophisticated than commercial production and development software and technology for the commercial equivalents of such items, which would be classified under ECCNs 9E003 or 9E991. Consequently, the commenter recommended that ''build-to-print technology'' be authorized under STA for all parts classified under 9A619.x for engines classified under 9A619.a. BIS rejects this suggestion. The controls are warranted because, by definition, the engines and parts at issue are ''specially designed'' for military aircraft. As such, they warrant control regardless of whether they are more or less sophisticated than their purely civil counterparts.

8. Additional Changes Made to ECCNs 9D619 and 9E619

BIS is clarifying that 9D619 and 9E619 control software and technology, respectively, for the development of production of ''tip shrouds'' rather than just ''shrouds.'' Further, BIS is removing the Note to 9D619 and Note to 9E619 because BIS added Supplement No.4 to part 774 for the CCL order of review, which more clearly addresses the concept outlined in those notes. Also, BIS is amending ECCNs 9D619 and 9E619 to make conforming changes due to finalization of certain proposed rules published after the December 6 (gas turbine engines) rule. The Related Controls paragraph of 9D619 is amended to reflect the revised *de minimis* levels for ''600 series'' items, as proposed in the June 21 (transition) rule and finalized in this rule. The Related Controls paragraph of 9E619 is also revised to remove the reference to ECCN 0A919 foreign-made ''military commodities'' because technology would not be considered in conducting a *de minimis* calculation for a commodity. Also, to improve clarity, 9D619.y.1 and y.2 are merged into 9D619.y, and 9E619.y.1 and y.2 are merged into 9E619.y. Finally, the wording used in ECCNs 9D619.b.15 and 9E619.c.6 has been revised slightly to parallel the wording used in State's revised USML Category XIX(e), as published April 16, 2013, to read ''[d]igital engine control systems'' rather than ''[d]igital engine controls.''

E. 9Y018 ECCNs Rolled Into ''600 Series''

Consistent with the regulatory construct identified in the July 15 (framework) rule (i.e., to move items from 018 ECCNs to the appropriate ''600 series'' ECCNs in order to consolidate the WAML and former USML items into one series of ECCNs), this rule moves aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as parts and accessories and attachments for the forgoing that, prior to the effective date of this final rule, were controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, or .f to new ''600 series'' ECCN 9A610. In addition, this rule moves military trainer aircraft turbo prop engines and parts and components therefor that were controlled under ECCN 9A018.a.2 or .a.3 to new ''600 series'' ECCN 9A619. ECCN 9A018.a is removed and reserved and references to 9A018.a are removed from the Regional Stability license requirement paragraph of ECCNs 9A018, 9D018 and 9E018. In addition, this rule removes the sentence about parachute systems in the Related Definition paragraph of 9A018. Related ''software'' and ''technology'' that were controlled under ECCNs 9D018 and 9E018, are now controlled under new ''600 series'' ECCNs 9D610, 9D619, 9E610, and 9E619.

Furthermore, consistent with the July 15 (framework) rule's statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule amends the Related Controls paragraphs in ECCNs 9A018, 9D018, and 9E018 to include references to the new ''600 series'' ECCNs indicated above. Specifically, the Related Controls paragraph in ECCN 9A018 refers to ECCN 9A610, for commodities previously controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, and .f, and to ECCN 9A619, for commodities previously controlled under ECCN 9A018.a.2 or .a.3. Similarly, ECCN 9D018 refers to new ECCNs 9D610 and 9D619 for related ''software,'' and ECCN 9E018 refers to ECCNs 9E610 and 9E619 for related ''technology.''

However, ground vehicles in ECCN 9A018 that would be moved to new ''600 series'' ECCN 0A606 under a proposed rule that BIS published on December 6, 2011 (76 FR 76085), will continue to be controlled under ECCN 9A018.b until BIS publishes the final rule that would add new ''600 series'' ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 to the CCL to control articles the President determines no longer warrant control under Category VII (military vehicles and related articles) of the USML. In addition, related ''software'' and ''technology'' for these ground vehicles will continue to be controlled under ECCNs 9D018 and 9E018, respectively, until BIS publishes the final rule that adds the 0x606 ECCNs to the CCL.

F. Supplement Nos. 6 and 7—Sensitive List and Very Sensitive List

The June 21 (transition) rule proposed adding new Supplement Nos. 6 and 7, the Sensitive List and the Very Sensitive List, respectively, to the Commerce Control List. These lists are referenced in License Exception GOV (§ 740.11) and Wassenaar Arrangement reporting requirements (part 743). As explained in the June 21 (transition) rule, these lists replace the list of items previously set forth in Supplement No. 1 to § 740.11. While the items on the lists are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement.

Two commenters recommended removing the titles for Supplement Nos. 6 and 7 and only referencing these supplements by location in the EAR, because they thought it was confusing to use the same titles that are used in Wassenaar Arrangement's List of Dual-use Goods and Technologies and Munitions List, but not to use the same numbering system. BIS does not accept this recommendation, because removing the titles makes the purpose of the lists less clear to the public. The titles and explanations in the notes at the start of each list provide valuable information about the source of the lists, the relation of the items to national security controls, the organizational body that makes changes to the list, and, for those familiar with the Wassenaar Arrangement, provide a context for how changes are made and generally when to expect changes to be made to the lists. Therefore, this rule implements, without change from the June 21 (transition) rule proposal, the addition of Supplement Nos. 6 and 7, the Sensitive List and the Very Sensitive List, respectively. The version of Supplement No. 6 contained in this final rule is modified from that published in the June 21 (transition) rule to reflect revisions to the Sensitive List agreed to by the Wassenaar Arrangement members subsequent to publication of that proposed rule.

G. Supplement No. 4—Commerce Control List Order of Review

This final rule is adding a new Supplement No. 4 to part 774—Commerce Control List Order of Review. A different Supplement No. 4 to part 774 listing ''600 series'' items eligible for License Exception STA was proposed in the November 7 (aircraft) rule. BIS elected to incorporate information on STA eligibility into the relevant ECCN rather than create a Supplement.

This new supplement will provide the public with guidance on the steps that are to be taken (i.e., the order of review) when reviewing the CCL, in light of the new ''600 series'' and the new definition of ''specially designed'' also being added in this final rule. This new supplement also clarifies the existing policy in regards to the ITAR taking precedence over the EAR and how the ''600 series'' takes precedence over the rest of the CCL in terms of the order of review when reviewing the CCL for items that are ''subject to the EAR.'' This new supplement will clearly identify the steps the public should follow to classify items on the CCL. As described above under the changes to part 738, a new cross reference is also being added to § 738.2 paragraph (c) to direct the public to this new supplement.

XXV. Procedural Amendment—Authority Citation Update

This rule revises the authority citation paragraphs for parts 730, 734, 743, and 750 of the EAR to cite Executive Order 13637 of March 8, 2013 (78 FR 16129, March 13, 2013). That executive order provided authority underlying the issuance of licenses for items that are subject to the EAR by DDTC and directed the Secretary of Commerce to develop procedures for notifying Congress of certain exports. Parts 730, 734, 743, and 750 address the issuance of licenses by DDTC and Congressional notifications. Adding this citation to the EAR authority citation paragraphs is a purely procedural action to keep authority citations listed the Code of Federal Regulations accurate and current. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This final rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; license exceptions (0694–0137); voluntary self-disclosure of violations (0694–0058); recordkeeping (0694–0096); export clearance (0694–0122); and the Automated Export System (0607–0152).

As stated in the July 15 (framework) rule, BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually. As the review of the USML progressed, the interagency group gained more specific information about the number of items that would come under BIS jurisdiction. As of the June 21 (transition) rule, BIS estimated the increase in license applications to be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694–0088. BIS continues to review its estimate of this level of increase as more information becomes available. As described below, the *net* burden U.S. export controls impose on U.S. exporters will go down as a result of the transfer of less sensitive military items to the jurisdiction of the CCL and the application of the license exceptions and other provisions set forth in this rule.

Some items formerly on the USML will become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of an eligibility request. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 14,758 hours (12,650 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated

with approved collections related to the ITAR.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that the following proposed rules will not have a significant impact on a substantial number of small entities for the reasons explained below: the July 15 (framework) rule, November 7 (aircraft) rule, December 6 (gas turbine engines) rule, June 19 (specially designed) rule, and June 21 (transition) rule, if promulgated. Summaries of the factual basis for the certification were provided in the respective proposed rules that are being finalized in this rule and are not repeated here. No comments were received regarding the economic impact of this final rule. Consequently, BIS has not prepared a regulatory flexibility analysis.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750 and 758

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research science and technology.

15 CFR Parts 736, 738, 770 and 772

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 2. Section 730.3 is revised to read as follows:

§ 730.3 ''Dual use'' and other Types of Items Subject to the EAR.

The term ''dual use'' is often used to describe the types of items subject to the EAR. A ''dual-use'' item is one that has civil applications as well as terrorism and military or weapons of mass destruction (WMD)-related applications. The precise description of what is ''subject to the EAR'' is in § 734.3, which does not limit the EAR to controlling only dual-use items. In essence, the EAR control any item warranting control that is not exclusively controlled for export, reexport, or transfer (in-country) by another agency of the U.S. Government or otherwise excluded from being subject to the EAR pursuant to § 734.3(b) of the EAR. Thus, items subject to the EAR include purely civilian items, items with both civil and military, terrorism or potential WMD-related applications, and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 et seq.).

■ 3. Section 730.6 is amended by revising the first and second sentences to read as follows:

§ 730.6 Control purposes.

The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and other interests of the United States, which in many cases are reflected in international obligations or arrangements. Some controls are designed to restrict access to items subject to the EAR by countries or persons that might apply such items to uses inimical to U.S. interests. * * *

PART 732—[AMENDED]

■ 4. The authority citation for 15 CFR part 732 continues to read as follows:

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

■ 5. Section 732.1 is amended by adding paragraph (a)(3) to read as follows:

§ 732.1 Steps overview.

(a) * * *

(3) The general information in this part is intended to provide an overview of the steps to be taken for certain requirements in the EAR, though not all of them. Nothing in this part shall be construed as altering or affecting any other authority, regulation, investigation or other enforcement measure provided by or established under any other provision of federal law, including provisions of the EAR.

* * * * *

■ 6. Section 732.2 is amended by revising paragraph (f) to read as follows:

§ 732.2 Steps regarding the scope of the EAR.

* * * * *

(f) Step 6: Direct product rule. Foreign items that are the direct product of U.S. technology, software, or plant or major component of a plant made from U.S. technology or software may be subject to the EAR if they meet the conditions of General Prohibition Three in § 736.2(b)(3) of the EAR. Direct products that are subject to the EAR may require a license to be exported from abroad or reexported to certain countries.

(1) Subject to the EAR. If your foreign item is captured by the direct product rule (General Prohibition Three), then the item is subject to the EAR and its export from abroad or reexport may require a license. You should next consider the steps regarding all other general prohibitions, license exceptions, and other requirements. If the item is not captured by General Prohibition Three, then you have completed the steps necessary to determine whether the item is subject to the EAR, and you may skip the remaining steps. As described in part 734 of the EAR, items outside the U.S. are subject to the EAR when they are:

(i) U.S.-origin commodities, software, or technology, unless controlled for export exclusively by another U.S. Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, or technology that are within the scope of General Prohibition Two (*De minimis* rules), or General Prohibition Three (Direct Product rule). However, such foreign-origin items are also outside the scope of the EAR if they are controlled for export exclusively by another U.S. Federal Agency or, if technology or software, are publicly available as described in paragraph (b) of this section.

(2) [Reserved]

* * * * *

■ 7. Section 732.3 is amended by revising paragraphs (b)(1) and (f), to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(b) * * *

(1) You should classify your items ''subject to the EAR'' in the relevant entry on the CCL, and you may do so on your own without BIS assistance. The CCL includes a Supplement No. 4 to part 774—Commerce Control List Order of Review. This supplement establishes the steps (i.e., the order of review) that should be followed in classifying items that are ''subject to the EAR.'' The exporter, reexporter, or transferor is responsible for correctly classifying the items in a transaction, which may involve submitting a classification request to BIS. Failure to classify or have classified the item correctly does not relieve the person of the obligation to obtain a license when one is required by the EAR.

* * * * *

(f) Step 11: Direct product rule—General Prohibition Three. Items located outside the U.S. that are also produced outside the U.S. from U.S. technology or software or a plant or major component of a plant made from U.S. technology or software may be subject to the EAR if they meet the conditions of General Prohibition Three in § 736.2(b)(3) of the EAR. Direct products that are subject to the EAR may require a license to be exported from abroad or reexported to specified countries. If your foreign item is captured by the direct product rule (General Prohibition Three), then your export from abroad or reexport is subject to the EAR. You should next consider the steps regarding all other general prohibitions, license exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad or reexport is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps.

* * * * *

■ 8. Section 732.4 is amended by:

■ a. Adding a sentence to the end of paragraph (b)(3)(iv); and

■ b. Revising paragraph (b)(7).

The addition and revision read as follows:

§ 732.4 Steps regarding using License Exceptions.

* * * * *

(b) * * *

(3) * * *

(iv) * * * If you are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and your item is classified in the ''600 series,'' you should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

* * * * *

(7) *Step 26: License applications.* (i) If you are going to file a license application with BIS, you should first review the requirements in part 748 of the EAR. Exporters, reexporters, and transferors should review the instructions concerning applications and required support documents prior to submitting an application for a license.

(ii) If you are going to file a license application with BIS for the export, reexport or in-country transfer for an aircraft controlled under ECCNs 9A610.a, § 740.20(g) permits you to request in the application that subsequent exports of the type of aircraft at issue be eligible for export under License Exception STA. The types of aircraft controlled under ECCN 9A610.a that have been determined to be eligible for License Exception STA pursuant to § 740.20(g) are identified in the License Exceptions paragraph of ECCN 9A610. Supplement No. 2 to part 748, paragraph (w) (License Exception STA eligibility requests), contains the instructions for such applications.

Note to paragraph (b)(7)(ii): If you intend to use License Exception STA, return to paragraphs (a) and then (b) of this section to review the Steps regarding the use of license exceptions.

■ 9. Supplement No. 3 to part 732 is amended by adding paragraphs (b)13. and (b)14. to read as follows:

Supplement No. 3 to Part 732—BIS's ''Know Your Customer'' Guidance and Red Flags

* * * * *

(b) * * *

13. You receive an order for ''parts'' or ''components'' for an end item in the ''600 series.'' The requested ''parts'' or ''components'' may be eligible for License Exception STA, another authorization, or may not require a destination-based license requirement for the country in question. However, the requested ''parts'' or ''components'' would be sufficient to service one hundred of the ''600 series'' end items, but you ''know'' the country does not have those types of end items or only has two of those end items.

14. The customer indicates or the facts pertaining to the proposed export suggest that a ''600 series'' item may be reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR).

PART 734—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 11. Section 734.3 is amended by adding a note to paragraph (b)(1)(i) and paragraph (e) to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(b) * * *

(1) * * *

Note to paragraph (b)(1)(i): If a defense article or service is controlled by the U.S. Munitions List set forth in the International Traffic in Arms Regulations, its export and temporary import is regulated by the Department of State. The President has delegated the authority to control defense articles and services for purposes of permanent import to the Attorney General. The defense articles and services controlled by the Secretary of State and the Attorney General collectively comprise the U.S. Munitions List under the Arms Export Control Act (AECA). As the Attorney General exercises independent delegated authority to designate defense articles and services for purposes of permanent import controls, the permanent import control list administered by the Department of Justice has been separately labeled the U.S. Munitions Import List (27 CFR Part 447) to distinguish it from the list set out in the International Trade in Arms Regulations. In carrying out the functions delegated to the Attorney General pursuant to the AECA, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States.

* * * * *

(e) Items subject to the EAR may be exported, reexported, or transferred in country under licenses, agreements, or other approvals from the Department of State's Directorate of Defense Trade Controls pursuant to §§ 120.5(b) and 126.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR 120.5(b) and 126.6(c)). Exports, reexports, or in-country transfers not in accordance with the terms and conditions of a license, agreement, or other approval under § 120.5(b) of the ITAR requires separate authorization from BIS. Exports, reexports, or in-country transfers of items subject to the EAR under a Foreign Military Sales case that exceed the scope of § 126.6(c) of the ITAR or the scope of actions made by the Department of State's Office of Regional Security and Arms Transfers require separate authorization from BIS.

■ 12. Section 734.4 is amended by redesignating paragraph (a)(6) as paragraph (a)(7) and by adding a new paragraph (a)(6) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(6) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin ''600 series'' items when destined for a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR.

* * * * *

PART 736—[AMENDED]

■ 13. The authority citation for part 736 continues to read as follows:

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

■ 14. Section 736.2 is amended by revising paragraph (b)(3)(iii) and adding paragraphs (b)(3)(iv) through (vi) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(iii) *Additional country scope of prohibition for ''600 series'' items.* You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any ''600 series'' item subject to the scope of this General Prohibition Three to a destination in Country Groups D:1, D:3, D:4, D:5 or E:1 (See Supplement No.1 to part 740 of the EAR).

(iv) *Product scope of ''600 series'' items subject to this prohibition.* This General Prohibition Three applies if a ''600 series'' item meets either of the following conditions:

(A) *Conditions defining direct product of technology or software for ''600 series'' items.* Foreign-made ''600 series'' items are subject to this General Prohibition Three if the foreign-made items meet both of the following conditions:

(*1*) They are the direct product of technology or software that is in the ''600 series'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR; and

(*2*) They are in the ''600 series'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(B) *Conditions defining direct product of a plant for ''600 series'' items.* Foreign-made ''600 series'' items are also subject to this General Prohibition Three if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(*1*) Such plant or component is the direct product of ''600 series'' technology or software as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR, and

(*2*) Such foreign-made direct products of the plant or component are in the ''600 series'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(v) ''600 series'' foreign-produced direct products of U.S. technology or software subject to this General Prohibition Three do not require a license for reexport or export from abroad to the new destination unless the same item, if exported from the U.S. to the new destination, would have been prohibited or made subject to a license requirement by part 742, 744, 746, or 764 of the EAR.

(vi) *License Exceptions.* Each license exception described in part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met and the restrictions in § 740.2 do not apply.

* * * * *

■ 15. Supplement No. 1 to part 736 is amended by adding General Order No. 5, to read as follows:

Supplement No. 1 to Part 736 General Orders

* * * * *

General Order No. 5

General Order No. 5 of April 16, 2013; Authorization for Items the President Determines No Longer Warrant Control under the United States Munitions List (USML).

(a) *Continued use of DDTC approvals from the Department of State's Directorate of Defense Trade Controls (DDTC) for items that become subject to the EAR.* Items the President has determined no longer warrant control under the USML will become subject to the EAR as published final rules that

transfer the items to the CCL become effective. DDTC licenses, agreements, or other approvals that contain items transitioning from the USML to the CCL and that are issued prior to the effective date of the final rule transferring such items to the CCL may continue to be used in accordance with the Department of State's final rule, *Amendments to the International Trade in Arms Regulations: Initial Implementation of Export Control Reform,* published on April 16, 2013 in the **Federal Register**.

(b) *BIS authorization.*

(1) Where continued use of DDTC authorization is not or is no longer an available option, or a holder of an existing DDTC authorization returns or terminates that authorization, any required authorization to export, reexport, or transfer (in-country) a transitioned item on or after the effective date of the applicable final rule must be obtained under the EAR. Following the publication date and prior to the effective date of a final rule moving an item from the USML to the CCL, applicants may submit license applications to BIS for authorization to export, reexport, or transfer (in-country) the transitioning item. BIS will process the license applications in accordance with § 750.4 of the EAR, hold the license application without action (HWA) if necessary, and issue a license, if approved, to the applicant no sooner than the effective date of the final rule transitioning the items to the CCL.

(2) Following the effective date of a final rule moving items from the USML to the CCL, exporters, reexporters, and transferors of such items may return DDTC licenses in accordance with § 123.22 of the ITAR or terminate Technical Assistance Agreements, Manufacturing License Agreements, or Warehouse and Distribution Agreements in accordance with § 124.6 of the ITAR and thereafter export, reexport, or transfer (in-country) such items under applicable provisions of the EAR, including any applicable license requirements. No transfer (in-country) may be made of an item exported under a DDTC authorization containing provisos or other limitations without a license issued by BIS unless (i) the transfer (in-country) is authorized by an EAR license exception and the terms and conditions of the License Exception have been satisfied, or (ii) no license would otherwise be required under the EAR to export or reexport the item to the new end user.

(c) *Prior commodity jurisdiction determinations.* If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing ''018'' series ECCN, then the item is per se not within the scope of a ''600 series'' ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (i.e., the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

(d) *Voluntary Self-Disclosure.* Parties to transactions involving transitioning items are cautioned to monitor closely their compliance with the EAR and the ITAR. Should a possible or actual violation of the EAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Self-Disclosure to the Office of Export Enforcement, in accordance with § 764.5 of the EAR. Permission from the Office of Exporter Services, in accordance with § 764.5(f) of the EAR, to engage in further activities in connection with that item may also be necessary. Should a possible or actual violation of the ITAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Disclosure to DDTC, in accordance with § 127.12 of the ITAR. For possible or actual violations of both the EAR and ITAR, the person or persons involved are strongly encouraged to submit disclosures to both BIS and DDTC, indicating to each agency that they also have made a disclosure to the other agency.

PART 738—[AMENDED]

■ 16. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 17. Section 738.2 is amended by:

■ a. Revising paragraph (c);

■ b. In the introductory text of paragraph (d)(1), adding paragraphs ''5:'' and ''6:'' after paragraph ''3:'' and before paragraph ''9:'';

■ c. Adding paragraph (d)(1)(iv); and

■ d. Adding to paragraph (d)(2)(ii) a sentence immediately following the fifth sentence.

The revision and additions read as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(c) *Order of review.* The CCL includes a Supplement No. 4 to part 774—Commerce Control List Order of Review. This supplement establishes the steps (i.e., the order of review) that should be followed in classifying items that are ''subject to the EAR.''

(d) * * *

(1) * * *

5: Items warranting national security or foreign policy controls at the determination of the Department of Commerce.

6: ''600 series'' controls items because they are items on the Wassenaar Arrangement Munitions List (WAML) or formerly on the U.S. Munitions List (USML).

* * * * *

(iv) Last two characters in a ''600 series'' ECCN. The last two characters of each ''600 series'' ECCN generally track the Wassenaar Arrangement Munitions List (WAML) categories for the types of items at issue. The WAML ML21 (''software'') and ML22 (''technology'') are, however, included in D (''software'') and E (''technology'') CCL product groups to remain consistent with the structure of the CCL.

(2) * * *

(ii) * * * In some ''600 series'' ECCNs, the STA license exception paragraph or a note to the License Exceptions section contains additional information on the availability of License Exception STA for that ECCN.

* * * * *

PART 740—[AMENDED]

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

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

■ 19. Section 740.1 is amended by adding a sentence to end of paragraph (a) to read as follows:

§ 740.1 Introduction.

* * * * *

(a) *Scope.* * * * Any license exception authorizing reexports also authorizes in-country transfers, provided the terms and conditions for reexports under that license exception are met.

* * * * *

■ 20. Section 740.2 is amended by adding paragraphs (a)(12), (13), (15), and (16), and a note to paragraph (a) to read as follows:

§ 740.2 Restrictions on all license exceptions.

(a) * * *

(12) The item is described in a ''600 series'' ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 (see Supplement No.1 to part 740 of the EAR), except that such items are eligible for License Exception GOV (§ 740.11(b)(2) of the EAR) unless otherwise restricted by that paragraph.

(13) ''600 series'' items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D610.b, 9D619.b, 9E610.b, or 9E619.b or .c are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR). The only license exceptions under which other ''600 series'' items may be exported to destinations not identified in Country Group D:5 (see Supplement No.1 to part 740 of the EAR) are the following:

(i) License Exception LVS (§ 740.3 of the EAR);

(ii) License Exception TMP (§ 740.9 of the EAR);

(iii) License Exception RPL (§ 740.10 of the EAR);

(iv) License Exception TSU (§ 740.13(a) or (b) of the EAR);

(v) License Exception GOV (§ 740.11(b) or (c) of the EAR); and

(vi) License Exception STA under § 740.20(c)(1) of the EAR if the ''600 series'' item at the time of export, reexport, or transfer (in-country):

(A) Is destined to one of the countries listed in Country Group A:5 or the United States;

(B) Is for the *ultimate* end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government, *or* the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States for *ultimate* end use by any such government agencies, the United States Government, or a person in the United States;

(C) Is transferred in compliance with the conditions on the use of License Exception STA contained in § 740.20(b)(2) of the EAR; and

(D) Is not precluded in the relevant ECCN from being exported under License Exception STA or until after the review and clearance requirements in § 740.20(g) of the EAR for ECCN 9A610.a end items have been satisfied.

* * * * *

(15) If they are sold under a contract that includes $14,000,000 or more of ''600 Series Major Defense Equipment'' (as defined in § 772.1), exports of ''600 series'' items to a country not listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

(16) If they are sold under a contract that includes $25,000,000 or more of ''600 Series Major Defense Equipment'' (as defined in § 772.1), exports of ''600 series'' items to a country listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

Note to paragraph (a): Items subject to the exclusive export control jurisdiction of another agency of the U.S. Government may not be authorized by a license exception or any other authorization under the EAR. If your item is subject to the exclusive jurisdiction of another agency of the U.S. Government, you must determine your export licensing requirements pursuant to the other agency's regulations. See § 734.3(b) and Supplement No. 3 to part 730 of the EAR for other U.S. Government departments and agencies with export control responsibilities.

* * * * *

■ 21. Section 740.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(a) *Temporary exports, reexports, and transfers (in-country).* License Exception TMP authorizes exports, reexports, and transfers (in-country) of items for temporary use abroad (including use in or above international waters) subject to the conditions specified in this paragraph (a). No item may be exported, reexported, or transferred (in-country) under this paragraph (a) if an order to acquire the item, such as a purchase order, has been received before shipment; with prior knowledge that the item will stay abroad beyond the terms of this License Exception; or when the item is for subsequent lease or rental abroad. The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of ''600 series'' items to destinations in Country Group D:5.

(1) *Tools of trade.* Exports, reexports, or transfers (in-country) of commodities and software as tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:1; for Sudan, see paragraph (a)(2) of this section. The tools of trade must remain under the ''effective control'' of the exporter or the exporter's employee. Eligible items are usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Tools of trade include, but are not limited to, commodities and software as is necessary to commission or service items, provided that the commodity or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported, reexported, or transferred. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Software used as a tool of trade must be protected against unauthorized access. Examples of security precautions to help prevent unauthorized access include the following:

(i) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for activities that involve the transmission and use of the software authorized under this license exception;

(ii) Use of password systems on electronic devices that store the software authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that store the software authorized under this license exception.

(2) *Sudan: Tools of Trade.* (i) *Permissible users.* A non-governmental organization or an individual staff member, employee or contractor of such organization traveling to Sudan at the direction or with the knowledge of such organization may export, reexport, or transfer (in-country) under this paragraph (a)(2).

(ii) *Authorized purposes.* Any tools of trade exported, reexported, or transferred (in-country) under this paragraph must be used to support activities to implement the Doha Document for Peace in Darfur; to provide humanitarian or development assistance in Sudan, to support activities to relieve human suffering in

Sudan, or to support the actions in Sudan for humanitarian or development purposes; by an organization authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521 in support of its OFAC-authorized activities; or to support the activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412.

(iii) *Method of export and maintenance of control.* The tools of trade must accompany (either hand carried or as checked baggage) a traveler who is a permissible user of this provision or be shipped or transmitted to such user by a method reasonably calculated to assure delivery to the permissible user of this provision. The permissible user of this provision must maintain ''effective control'' of the tools of trade while in Sudan.

(iv) *Eligible items.* The only tools of trade that may be exported, reexported or transferred (in-country) to Sudan under this paragraph (a)(2) are:

(A) Commodities controlled under ECCNs 4A994.b and ''software'' controlled under ECCNs 4D994 or 5D992 to be used on such commodities. Software must either be loaded onto the commodities prior to export, reexport, or transfer (in-country) or be exported, reexported, or transferred (in-country) solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on the commodities while in Sudan;

(B) Telecommunications equipment controlled under ECCN 5A991 and ''software'' controlled under ECCN 5D992 to be used in the operation of such equipment. Software must be loaded onto such equipment prior to export or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such equipment while in Sudan;

(C) Global positioning systems (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(D) Commodities that are controlled under ECCN 5A992, including commodities that are installed with, or contained in, commodities in paragraphs (a)(2)(iv)(A) and (B) of this section and that remain installed with or contained in such commodities while in Sudan. (3) *Tools of trade: temporary exports, reexports, and transfers (in-country) of technology by U.S. persons.* (i) This paragraph authorizes exports, reexports, and transfers (in-country) of usual and reasonable kinds and quantities of technology for use in a lawful enterprise or undertaking of a U.S. person to destinations other than Country Group E:1. Only U.S. persons or their employees traveling or on temporary assignment abroad may export, reexport, transfer (in-country) or receive technology under the provisions of this paragraph (a)(3).

(A) Because this paragraph (a)(3) does not authorize any new release of technology, employees traveling or on temporary assignment abroad who are not U.S. persons may only receive under TMP such technology abroad that they are already eligible to receive through a current license, a license exception other than TMP, or because no license is required;

(B) A U.S. employer of individuals who are not U.S. persons must demonstrate and document for recordkeeping purposes the reason that the technology is needed by such employees in their temporary business activities abroad on behalf of the U.S. person employer, prior to using this paragraph (a)(3). This documentation must be created and maintained in accordance with the recordkeeping requirements of part 762 of the EAR; *and*

(C) The U.S. person must retain supervision over the technology that has been authorized for export, reexport, or transfer (in-country) under these or other provisions.

(ii) The exporting, reexporting, or transferring party and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(A) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for email and other business activities that involve the transmission and use of the technology authorized under this license exception;

(B) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(C) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(iii) Technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS.

(iv) Encryption technology controlled by ECCN 5E002 is ineligible for this license exception.

(4) *Kits consisting of replacement parts or components.* Kits consisting of replacement parts or components may be exported, reexported, or transferred (in-country) to all destinations except Country Group E:1 (see Supplement No. 1 to part 740 of the EAR), provided that:

(i) The parts and components would qualify for shipment under paragraph (a)(4)(iii) of this section if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts and components in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a) of this part).

(5) *Exhibition and demonstration.* This paragraph (a)(5) authorizes exports, reexports, and transfers (in-country) of commodities and software for exhibition or demonstration in all destinations except Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains ''effective control'' over the commodities and software while they are abroad. The commodities and software may not be used when abroad for more than the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site for longer than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains ''effective control'' over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(6) *Inspection and calibration.* Commodities to be inspected, tested, calibrated, or repaired abroad may be exported, reexported, and transferred (in-country) under this paragraph (a)(6)

to all destinations except Country Group E:1.

(7) *Containers.* Containers for which another license exception is not available and that are necessary for shipment of commodities may be exported, reexported, and transferred (in-country) under this paragraph (a)(7). However, this paragraph does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a license exception or a license.

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(9) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may be temporarily exported or reexported for accredited news media personnel (i.e., persons with credentials from a news-gathering or reporting firm) to Cuba, North Korea, Sudan, or Syria (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under ''effective control'' of the exporting news-gathering firm in the country of destination;

(B) Remain in the physical possession of the news media personnel in the country of destination. The term physical possession for purposes of this paragraph (a)(9) means maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this paragraph (a)(9) from the United States, the exporter must email a copy of the packing list or similar identification of the exported commodities, to *bis.compliance@bis.doc.gov* specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may check returns to assure that the provisions of this paragraph (a)(9) are being used properly.

(iii) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported, reexported, or transferred (in-country) under paragraph (a)(1), *tools of trade,* of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(1), *tools of trade,* and (a)(9), *news media,* of this section do not preclude independent accredited contract personnel, who are under control of news-gathering firms while on assignment, from using these provisions, provided that the news gathering firm designates an employee of the contract firm to be responsible for the equipment.

(10) *Temporary exports to a U.S. person's foreign subsidiary, affiliate, or facility abroad.* Components, parts, tools, accessories, or test equipment exported by a U.S. person to a subsidiary, affiliate, or facility owned or controlled by the U.S. person, if the components, parts, tools, accessories, or test equipment are to be used to manufacture, assemble, test, produce, or modify items, provided that such components, parts, tools, accessories or test equipment are not transferred (in-country) or reexported from such subsidiary, affiliate, or facility, alone or incorporated into another item, without prior authorization by BIS.

(11) [Reserved].

(12) *U.S. persons.* For purposes of this § 740.9, a U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is authorized to do business in the United States).

(13) *Destinations.* Destination restrictions apply to temporary exports, reexports, or transfers (in-country) to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country specified in any authorizing paragraph of this section, or any national thereof.

(14) *Return or disposal of items.* All items exported, reexported, or transferred (in-country) under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, reexport, or transfer to the United States or other country from which the items were so transferred. Items not returned shall be disposed of or retained in one of the following ways:

(i) *Permanent export, reexport, or transfer (in-country).* An exporter or reexporter who wants to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR. (Part 748 of the EAR contains for more information about license applications.) The application must be supported by any documents that would be required in support of an application for export license for shipment of the same items directly from the United States to the proposed destination.

(ii) *Use of a license.* An outstanding license may also be used to dispose of items covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same items to the same new ultimate consignee or end-user.

(iii) *Authorization to retain item abroad beyond one year.* An exporter, reexporter or transferor who wants to retain an item at the temporary location beyond one year must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS at least 90 days prior to the expiration of the one-year period. The application must include the name and address of the exporter, the date the items were exported, a brief product description, and the justification for the extension. If BIS approves the extension, the applicant will receive authorization for an extension not to exceed four years from the date of initial export, reexport, or transfer. Any request for retaining the items abroad for a period exceeding four years must be made in accordance with the requirements of paragraph (a)(14)(i) of this section.

(b) *Exports of items temporarily in the United States.* (1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of this paragraph (b)(1) authorize export of items moving in transit through the United States under a Transportation and Exportation (T.&E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs and Border Protection Office.

(i) Items controlled for national security (NS) reasons, nuclear proliferation (NP) reasons, or chemical and biological weapons (CB) reasons may not be exported to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:1 under this section.

(iii) The following may *not* be exported from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS–645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The authorization to export in paragraph (b)(1) shall apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin, notwithstanding any other provision of this paragraph (b)(1).

(2) *Items imported for marketing, or for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for marketing, or for display at an exhibition or trade fair *and* were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:1 (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740) of items controlled for national security (NS) reasons, nuclear nonproliferation (NP) reasons, or chemical and biological weapons (CB) reasons, respectively.

(3) *Return of foreign-origin items.* A foreign-origin item may be returned under this license exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States, except that no foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs and Border Protection, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR parts 500–599).

Note 1 to paragraph (b): A commodity withdrawn from a bonded warehouse in the United States under a 'withdrawal for export' customs entry is considered as 'moving in transit'. It is not considered as 'moving in transit' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

Note 2 to paragraph (b): Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.

Note 3 to paragraph (b): A shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license.

* * * * *

■ 22. Section 740.10 is revised to read as follows:

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).

License Exception RPL authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently ''subject to the EAR'' to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of defense articles subject to the ITAR, i.e., described on the United States Munitions List (22 CFR 121.1).

(a) *Parts, Components, Accessories, and Attachments.* (1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments.* (i) The terms *replacement parts, components, accessories, or attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate repair of equipment or other end items, including replacement of defective or worn parts or components. (These terms include 'subassemblies,' but do not include test instruments or operating supplies. The term '*subassembly'* means a number of parts or components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of 'subassemblies.') Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components, consult § 740.9(a)(4) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments. ''600 series'' parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments that were: lawfully exported from the United States, or lawfully reexported. (For exports or reexports to the installed base in Libya, see § 764.7 of the EAR.) The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts, components, accessories, and attachments may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions to License Exception RPL.* (i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other

authorization included a condition that any subsequent replacements may be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items as those spares are used in the repair of the equipment or other end item. This allows maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End Use Restrictions in § 744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an ''aircraft'' (as defined in § 772.1 of the EAR) or is controlled for national security (NS) reasons.

(v) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the license exceptions in this part or the exceptions in § 734.4 of the EAR (*De minimis* U.S. content).

(viii) Parts, components, accessories, and attachments classified in ''600 Series'' ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) *Reexports.* (i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts, components, accessories, or attachments shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to this part) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments (excluding ''600 series'' ECCNs) do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to § 734.4.

(b) *Servicing and replacement.* (1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport to any destination, except for ''600 series'' items to destinations identified in Country Group D:5 (see Supplement No. 1 to this part) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition.* ''Servicing'' as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics (e.g., the accuracy, capability, performance, or productivity) of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts, components, accessories, or attachments necessary to its repair and may be accompanied by any spare parts, components, tools, accessories, attachments or other items sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the People's Republic of China (PRC).* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC)) (see Supplement No. 1 to this part) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end use and the end user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) Replacements for defective or unacceptable U.S.-origin equipment.

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software is ''subject to the EAR'' (see § 734.2(a) of the EAR).

(B) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(F) Commodities or software ''subject to the EAR'' and classified in ''600 Series'' ECCNs may not be exported or reexported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1 (see Supplement No. 1 to this part):

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used. See § 764.7 of the EAR for exports or reexports to the installed base in Libya.

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984, and ''600 Series'' ECCNs.* (1) In addition to the other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a ''600 Series'' ECCN. The following information must be maintained for each such export or reexport transaction:

(i) A description of the item replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of item replaced;

(iv) Location of the item replaced, repaired or serviced;

(v) The name and address of those who received the items for replacement, repair, or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the annual or semi-annual reports of exports and reexports of ''600 Series'' items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

■ 23. Section 740.11 is revised to read as follows:

§ 740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel; agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) *International Safeguards.* (1) *Scope.* The International Atomic Energy Agency (IAEA) is an international organization that establishes and administers safeguards, including Additional Protocols, designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. European Atomic Energy Community (Euratom) is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (a) authorizes exports and reexports of commodities or software to the IAEA and Euratom, and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or its field offices in Toronto, Ontario, Canada or in Tokyo, Japan for official international safeguards use.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use.

(iii) Commodities or software consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities or software and returns the commodities or software to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by persons under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may be disposed of by destruction or by reexport or transfer in accordance with the EAR.

(2) *Restrictions.* (i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a), *except* to the countries listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR).

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a).

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may not be exported, reexported, or transferred (in-country) under this

paragraph (a). See § 740.17 of the EAR (License Exception ENC) for possible alternative license exception authorization.

(iv) Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1(see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by ''electronic assemblies,'' which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(v) ''600 series'' items may not be exported or reexported under this paragraph (a), *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(b) *United States Government.* (1) *Scope.* The provisions of this paragraph (b) authorize exports, reexports, and transfers (in-country) to personnel and agencies of the U.S. Government and certain exports by the Department of Defense. ''Agency of the U.S. Government'' includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-governmental national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(2) *Eligibility.* (i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and household employees. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government.* This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government solely for its official use or for carrying out any U.S. Government program with foreign governments or international organizations that is authorized by law and subject to control by the President by other means. This paragraph does not authorize a department or agency of the U.S. Government to make any export, reexport, or transfer that is otherwise prohibited by other administrative provisions or by statute. Contractor support personnel of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (e.g., contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

(iii) *Exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government.*

(A) This paragraph authorizes exports, reexports, and transfers (in-country) of items solely for use by a department or agency of the U.S. Government, when:

(*1*) The items are destined to a U.S. person; and

(*2*) The item is exported, reexported, or transferred (in-country) pursuant to a contract between the exporter and a department or agency of the U.S. Government;

(B) This paragraph authorizes exports, reexports, and transfers (in-country) of items to implement or support any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President by other means, when:

(*1*) The agreement is in force and in effect, or the arrangement is in operation;

(*2*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, agreement, or arrangement, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(*3*) The exporter, reexporter, or transferor has a contract with a department or agency of the U.S. Government for the provision of the items in furtherance of the agreement, or arrangement; and

(*4*) The items being exported, reexported, or transferred (in-country) are not controlled for Chemical Weapons Convention (CW) or proliferation of chemical and biological weapons (CB) reasons;

(C) This paragraph authorizes the temporary export, reexport, or transfer (in-country) of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when:

(*1*) The item is provided pursuant to a contract between the exporter, reexporter, or transferor and a department or agency of the U.S. Government; and

(*2*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(D) This paragraph authorizes the export, reexport, or transfer of commodities or software at the direction of the U.S. Department of Defense for an end use in support of an Acquisition and Cross Servicing Agreement (ACSA), when:

(*1*) The ACSA is between the U.S. Government and a foreign government or an international organization and is in force and in effect;

(*2*) The exporter, reexporter, or transferor has a contract with the department or agency of the U.S. government in furtherance of the ACSA; and

(*3*) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the ACSA, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include

the scope of items to be shipped under this license exception; the end-users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country);

(E) This paragraph authorizes the export, reexport, or transfer (in-country) of Government Furnished Equipment (GFE) made by a U.S. Government contractor, when:

(*1*) The GFE will not be provided to any foreign person;

(*2*) The export, reexport, or transfer (in-country) is pursuant to a contract with a department or agency of the U.S. Government; and

(*3*) Shipment documents must include the following statement: ''Property of [insert U.S. Government department, agency, or service]. Property may not enter the trade of the country to which it is shipped. Authorized under License Exception GOV. U.S. Government point of contact: [Insert name and telephone number].''

(F) *Electronic Export Information.* Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for any export made pursuant to paragraph (b)(iii) of this section. The EEI must identify License Exception GOV as the authority for the export and indicate that the applicant has received the relevant documentation from the contracting U.S. Government department, agency, or service. The Internal Transaction Number assigned by AES must be properly annotated on shipping documents (bill of lading, airway bill, other transportation documents, or commercial invoice).

(G) The exporter, reexporter, or transferor must obtain an authorization, if required, before any item previously exported, reexported, or transferred (in-country) under this paragraph is resold, transferred, reexported, transshipped, or disposed of to an end user for any end use, or to any destination other than as authorized by this paragraph (*e.g.,* property disposal of surplus items outside of the United States), unless:

(*1*) The transfer is pursuant to a grant, sale, lease, loan, or cooperative project under the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; or

(*2*) The item has been destroyed or rendered useless beyond the possibility of restoration.

(iv) *Items exported at the direction of the U.S. Department of Defense.* This paragraph authorizes items to be exported, reexported, or transferred (in-country) pursuant to an official written request or directive from the U.S. Department of Defense.

(v) This paragraph authorizes items sold, leased, or loaned by the U.S. Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961 when the items are delivered to representatives of such a country or organization in the United States and exported, reexported, or transferred on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service.

(vi) This paragraph authorizes transfer of technology in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for such technology and the technology is not ''development'' or ''production'' technology for ''600 series'' items.

(c) *Cooperating Governments.* (1) *Scope.* The provisions of this paragraph (c) authorize exports reexports, and transfers (in-country) of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments. ''Agency of a cooperating government'' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to this part) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland and Taiwan.

(2) *Eligibility.* (i) *Items for official use within national territory by agencies of cooperating governments.* This license exception is available for all items consigned to and for the official use of any 'agency of a cooperating government' within the territory of any cooperating government, except items excluded by paragraph (c)(3) of this section.

(ii) *Diplomatic and consular missions of a cooperating government.* This license exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to this part), except items excluded by paragraph (c)(3) of this section.

(3) *Exclusions.* The following items may not be exported, reexported, or transferred (in-country) under this paragraph (c):

(i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR), *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part);

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR);

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 (see § 740.17 of the EAR for License Exception ENC);

(iv) Regional stability items controlled under ECCNs 6A002.a.1.c, 6E001 ''technology'' according to the General Technology Note for the ''development'' of equipment in 6A002.a.1.c, and 6E002 ''technology'' according to the General Technology Note for the ''production'' of equipment in 6A002.a.1.c.;

(v) ''600 series'' items, *except* to the countries listed in Country Group A:5 (see Supplement No. 1 to this part);

(vi) Items controlled for nuclear nonproliferation (NP) reasons;

(vii) Items listed as not eligible for License Exception STA in § 740.20(b)(2)(ii) of the EAR.

(d) *International inspections under the Chemical Weapons Convention (CWC or Convention).* (1) The Organization for the Prohibition of Chemical Weapons (OPCW) is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (d) authorizes exports and reexports to the OPCW and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention as follows:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain ''effective control'' of such commodities, software and technology.

(ii) Controlled technology relating to the training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) *Exclusions.* The following items may not be exported or reexported under the provisions of this paragraph (d):

(i) Inspection samples collected in the U.S. pursuant to the Convention;

(ii) Commodities and software that are no longer in OPCW official use. Such items must be transferred in accordance with the EAR.

(iii) ''600 series'' items, *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(3) *Confidentiality.* The application of the provisions of this paragraph (d) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.

(4) *Restrictions.* Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1 (see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by ''electronic assemblies,'' which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(e) *International Space Station (ISS).* (1) *Scope.* The ISS is a research facility in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. The ISS is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. This paragraph (e) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the ISS.

(2) *Eligible commodities.* Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

Note 1 to paragraph (e)(2): This license exception is not available for the export or reexport of ''parts,'' ''components,'' ''accessories,'' and ''attachments'' to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.

Note 2 to paragraph (e)(2): For purposes of this paragraph (e), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (e)(8) of this section and the Recordkeeping requirements in part 762 of the EAR.

(3) *Eligible destinations.* Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(4) *Requirement for commodities to be launched on an eligible space launch vehicle (SLV).* Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) *Authorizations.* (i) *Authorization to retain commodity at or near launch site for up to six months.* If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under this paragraph (e) may be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) *Authorization to retain commodity abroad at launch country beyond six months.* If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch schedule that would exceed the 6-month deadline in paragraph (e)(5)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a commodity abroad beyond the 6-month extension period, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(iii) *Items not delivered to the ISS because of a failed launch.* If the commodities exported or reexported under this paragraph (e) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (e)(8)(ii) of this section and part 762 of the EAR.

(6) *Reexports to an alternate launch country.* If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported, then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (e) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month time limitation described in paragraph (e)(5)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or pursuant to an authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (e).

(7) *Eligible recipients.* Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (e), except that:

(i) No commodities may be exported, reexported, or transferred (in-country) under paragraph (e) to any national of an E:1 country (see Supplement No. 1 to this part), and

(ii) No person may receive commodities authorized under paragraph (e) of this section who is subject to an end-user or end-use control described in part 744 of the EAR, including the entity list in Supplement No. 4 to part 744.

(8) *Recordkeeping requirements.* Exporters and reexporters must maintain records regarding exports or reexports made using this paragraph (e) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins).

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using this paragraph (e) and the date on which the commodities were launched into space for delivery to the ISS. If the commodities are not delivered to the ISS because of a failed launch whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components is not required. However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (e) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned, under the provisions of this paragraph, to a country listed in Country Group E:1 (see Supplement No. 1 to this part) or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR. For purposes of paragraph (e) of this section, a 'defective or worn out' part or component is a part or component that no longer performs its intended function.

■ 24. Section 740.13 is amended by adding a sentence to the end of paragraph (a)(1), redesignating paragraph (f) as paragraph (h), and by adding new paragraphs (f) and (g) to read as follows:

§ 740.13 Technology and Software—Unrestricted (TSU).

(a) * * * This paragraph (a) authorizes training, provided the training is limited to the operation, maintenance and repair technology identified in this paragraph.

* * * * *

(f) *Release of technology and source code in the U.S. by U.S. universities to their bona fide and full time regular employees.* (1) *Scope.* This paragraph authorizes the release in the United States of ''technology'' and source code that is subject to the EAR by U.S. universities to foreign nationals who are their bona fide and full time regular employees.

(2) *Eligible foreign nationals (i.e., bona fide and full time regular employees of U.S. universities).* This exception is only available if:

(i) The employee's permanent residence throughout the period of employment is in the U.S.;

(ii) The employee is not a national of a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR); and

(iii) The university informs the individual in writing that the ''technology'' or source code may not be transferred to other foreign nationals without prior U.S. Government authorization. The obligation not to transfer technology extends beyond the tenure of employment at the university.

(3) *Regular employee.* A regular employee means:

(i) An individual permanently and directly employed by the university; or

(ii) An individual in a long-term contractual relationship with the university where the individual works at the university's facilities; works under the university's direction and control; works full time and exclusively for the university; executes nondisclosure certifications for the university; and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license or where a license exception is available).

(4) *Exclusions.* (i) No ''technology'' or source code may be released to a foreign national who is subject to a part 744 end-use or end-user control or where the release would otherwise be inconsistent with part 744; and

(ii) No ''technology'' controlled for ''EI'' (encryption) reasons or ''technology'' or source code controlled for ''MT'' (Missile Technology) reasons may be released under this paragraph (f).

(g) *Copies of technology previously authorized for export to same recipient.* This paragraph authorizes the export, reexport, or transfer (in-country) of copies of technology previously authorized for export, reexport, or transfer (in-country) to the same recipient. This paragraph also authorizes the export, reexport, or transfer (in-country) of revised copies of such technology provided the following three conditions are met:

(1) The item that the technology pertains to is the identical item;

(2) The revisions to the technology are solely editorial and do not add to the content of technology previously exported, reexported, or transferred (in-country) or authorized for export, reexport, or transfer (in-country) to the same recipient; and

(3) The exporter, reexporter, or transferor has no reason to believe the same recipient has used the technology in violation of the original authorization.

* * * * *

■ 25. Section 740.20 is amended by:
■ a. Revising paragraph (a);
■ b. Removing the phrase ''destinations indicated in paragraph (c)(1) of this section'' and adding in its place ''destinations indicated in Country Group A:5 (See Supplement No.1 to this part)'' in paragraph (b)(2)(vi);
■ c. Adding paragraph (b)(3);
■ d. Revising paragraphs (c)(1) and (2);
■ e. Adding three sentences immediately following the first sentence of paragraph (d)(2);
■ f. Removing the word ''and'' that follows the semicolon at the end of paragraph (d)(2)(v);
■ g. Adding paragraphs (d)(2)(vi), (d)(2)(vii)) and (g); and
■ h. Removing the phrase ''country listed in paragraph (c)(1) or (c)(2) of this section'' and adding in its place ''country listed in Country Group A:5 or A:6 (See Supplement No.1 to this part)'' in paragraph (d)(4).

The revisions and additions read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(a) *Introduction.* This section authorizes exports, reexports, and transfers (in-country), including releases within a single country of software source code and technology to foreign nationals, in lieu of a license that would otherwise be required pursuant to part 742 of the EAR.

(b) * * *

(3) *Limitations on the Use of STA that are Specific to ''600 series'' Items.* (i) License Exception STA may not be used for any ''600 series'' items identified in the relevant ECCN as not being eligible for STA.

(ii) License Exception STA may be used to export, reexport, and transfer (in-country) ''600 series'' items to persons, whether non-governmental or governmental, if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR) or the United States and if:

(*A*) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5, or the United States Government;

(B) For the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States; or

(C) The United States Government has issued a license that authorizes the use of License Exception STA, the license is in effect, and the consignee provides a copy of such authorization to the exporter.

(iii) License Exception STA may not be used to export, reexport, or transfer (in-country) end items described in ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g).

(iv) License Exception STA may not be used to export, reexport, or transfer (in-country) ''600 series'' items if they are ''600 Series Major Defense Equipment'' and the value of such items in the contract requiring their export exceeds $25,000,000.

(c) *Authorizing paragraphs*—(1) *Multiple reasons for control.* Exports, reexports, and transfers (in-country) in which the only applicable reason(s) for control is (are) national security (NS); chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/or significant items (SI) are authorized for destinations in or nationals of Country Group A:5 (See Supplement No.1 to part 740 of the EAR).

Note to paragraph (c)(1). License Exception STA under § 740.20(c)(1) may be used to authorize the export, reexport, or transfer (in-country) of ''600 series'' items only if the purchaser, intermediate consignee, ultimate consignee, and end user have previously been approved on a license issued by BIS or the Directorate of Defense Trade Controls (DDTC), U.S. Department of State.

(2) *Controls of lesser sensitivity.* Exports, reexports and transfers (in-country) in which the only applicable reason for control is national security (NS) and the item being exported, reexported or transferred (in-country) is not designated in the STA paragraph in the License Exception section of the ECCN that lists the item are authorized for destinations in or nationals of Country Group A:6 (See Supplement No.1 to this part).

* * * * *

(d) * * *

(1) * * *

(2) *Prior consignee statement.* * * * Paragraphs (d)(2)(i) through (v) of this section are required for all transactions. In addition, paragraph (d)(2)(vi) is required for all transactions in ''600 series'' items and paragraph (vii) of this section is required for transactions in ''600 series'' items if the consignee is not the government of a country listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR).

* * * * *

(vi) Understands that License Exception STA may be used to export, reexport, and transfer (in-country) ''600 series'' items to persons, whether non-governmental or governmental, only if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government;

(B) For the ''development,'' ''production,'' operation installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will *ultimately* be used by any such government agencies, the United States Government, or a person in the United States; or

(C) A United States Government license authorizes the use of License Exception STA, the license is in effect, and is attached to the consignee statement.

(vii) Agrees to permit a U.S. Government end-use check with respect to the items.

* * * * *

(g) *License Exception STA eligibility requests for ''600 series'' end items.* (1) *Applicability.* Any person may request License Exception STA eligibility for aircraft described in ECCN 9A610.a.

(2) *Required information and manner of requests.* Requests for License Exception STA eligibility must be made via the BIS Simplified Network Application Process–Redesign (SNAP–R) system unless BIS authorizes submission via the paper BIS–748–P Multipurpose Application form. For situations in which BIS 748–P submissions may be authorized, see § 748.1(d)(1). For required information specific to License Exception STA eligibility requests, see Supplement No. 1 to part 748, Blocks 5 and 6 and Supplement No. 2 to part 748, paragraph (w). In SNAP–R the work type for these applications is ''Export.''

(3) *Timeline for USG review.* The Departments of Commerce, Defense and State will review License Exception STA eligibility requests in accordance with the timelines set forth in Executive Order 12981 and § 750.4. If the License Exception STA request is approved, the process outlined in paragraph (g)(5)(i) of this section is followed.

(4) *Review criteria.* The Departments of Commerce, Defense and State will determine whether the ''end item'' is eligible for this license exception based on an assessment of whether it provides a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the ''end item'' does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Consensus among the Departments is required in order for an ''end item'' to be eligible for License Exception STA. Such determinations are made by the departments' representatives to the Advisory Committee on Export Policy (ACEP), or their designees.

(5) *Disposition of License Exception STA eligibility requests.* (i) *Approvals.* If the request for STA eligibility is approved, the applicant will receive notification from BIS authorizing the use of the additional License Exception STA for the specific end items requested. This will be in the form of a notice generated by SNAP–R to the applicant. Applicants who receive an approval notification may share it with companies affiliated with them, such as a branch or distributor, and may also take steps to make it public (e.g., on their Web site) if the applicants so wish. In addition, BIS will add a description of the approved end item in the relevant ECCN and in an online table posted on the BIS Web site, which removes the restriction on the use of License Exception STA for the end item identified in the approved request. BIS

will publish, as needed, a final rule adding this license exception eligibility to the EAR for that ECCN entry or end item.

(ii) Denials. If the STA eligibility request is not approved, the applicant will receive written notification from BIS. This will be in the form of a notice generated by SNAP–R to the applicant. Applicants may re-submit STA eligibility requests at any time.

■ 26. Supplement No. 1 to part 740, Country Group A is amended by:

■ a. Adding two columns A:5 and A:6 to the right of column A:4; and

■ b. Adding rows for: Albania, Israel, Singapore, and Taiwan, in alphabetic order, to read as follows:

	*******	[A:5]	[A:6]
Albania	*******		X
Argentina	*******	X	
Australia	*******	X	
Austria [1]	*******	X	
Belarus	*******		
Belgium	*******	X	
Brazil	*******		
Bulgaria	*******	X	
Canada	*******	X	
Croatia	*******	X	
Cyprus	*******		
Czech Republic	*******	X	
Denmark	*******	X	
Estonia	*******	X	
Finland [1]	*******	X	
France	*******	X	
Germany	*******	X	
Greece	*******	X	
Hong Kong [1]	*******		X
Hungary	*******	X	
Iceland	*******	X	
India	*******		X
Ireland [1]	*******	X	
Israel	*******		X
Italy	*******	X	
Japan	*******	X	
Kazakhstan	*******		
Korea, South [1]	*******	X	
Latvia	*******	X	
Lithuania	*******	X	
Luxembourg	*******	X	
Malta	*******		X
Netherlands	*******	X	
New Zealand [1]	*******	X	
Norway	*******	X	
Poland	*******	X	
Portugal	*******	X	
Romania	*******	X	
Russia	*******		
Singapore	*******		X
Slovakia	*******	X	
Slovenia	*******	X	
South Africa	*******		X
Spain	*******	X	
Sweden [1]	*******	X	
Switzerland [1]	*******	X	
Taiwan	*******		X
Turkey	*******	X	
Ukraine	*******		
United Kingdom	*******	X	
United States	*******		

[1] Cooperating Countries.

■ 27. Supplement No. 1 to part 740, Country Group D is amended by:

■ a. Adding column D:5 to the right of column D:4; and

■ b. Adding rows, in alphabetical order, for: Congo (Democratic Republic of), Cote d'Ivoire, Cyprus, Eritrea, Fiji, Haiti, Liberia, Somalia, Sri Lanka, Sudan, Venezuela, and Zimbabwe, to read as follows:

Country	*******	[D:5] U.S. Arms Embargoed Countries[1]
Afghanistan	*******	X
Armenia	*******	
Azerbaijan	*******	
Bahrain	*******	
Belarus	*******	X
Burma	*******	X
Cambodia	*******	
China (PRC)	*******	X
Congo, Democratic Republic of	*******	X

Cote d'Ivoire	*******	X
Cuba	*******	X
Cyprus	*******	X
Egypt	*******	
Eritrea	*******	X
Fiji	*******	X
Georgia	*******	
Haiti	*******	X
Iran	*******	X
Iraq	*******	X
Israel	*******	
Jordan	*******	
Kazakhstan	*******	
Korea, North	*******	X
Kuwait	*******	
Kyrgyzstan	*******	
Laos	*******	
Lebanon	*******	X
Liberia	*******	X
Libya	*******	X
Macau	*******	
Moldova	*******	
Mongolia	*******	
Oman	*******	
Pakistan	*******	
Qatar	*******	
Russia	*******	
Saudi Arabia	*******	
Somalia	*******	X
Sri Lanka	*******	X
Sudan	*******	X
Syria	*******	X
Taiwan	*******	
Tajikistan	*******	
Turkmenistan	*******	
Ukraine	*******	
United Arab Emirates	*******	
Uzbekistan	*******	
Venezuela	*******	X
Vietnam	*******	X
Yemen	*******	
Zimbabwe	*******	X

[1] *Note to Country Group D:5:* Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR § 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at *http://www.pmddtc.state.gov/embargoed_countries/index.html)* and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

PART 742—[AMENDED]

■ 28. The authority citation for part 742 continues to read as follows:

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

■ 29. Section 742.4 is amended by revising paragraph (b)(1), to read as follows:

§ 742.4 National security.

* * * * *

(b) *Licensing policy.* (1)(i) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(ii) When destined to a country listed in Country Group D:5 in Supplement No. 1 to Part 740 of the EAR, however, items classified under ''600 series'' ECCNs will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR).

* * * * *

■ 30. Section 742.6 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Removing the phrase ''9A018.a and .b, 9D018 (only software for the ''use'' of commodities in ECCN 9A018.a and .b), and 9E018 (only technology for the ''development'', ''production'', or ''use'' of commodities in 9A018.a and .b)'' and adding in its place ''9A018.b, 9D018 (only software for the ''use'' of commodities in ECCN 9A018.b), and 9E018 (only technology for the ''development'', ''production'', or ''use'' of commodities in 9A018.b)'' at the end of paragraph (a)(4)(i); and

■ c. Revising paragraph (b)(1).

The revisions read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 license requirements in general.* A license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include RS Column 1 in the Country Chart column of the ''License Requirements'' section. Transactions described in paragraphs (a)(2) or (3) of this section are subject to the RS Column 1 license requirements set forth in those paragraphs rather than the license requirements set forth in this paragraph (a)(1).

* * * * *

(b) *Licensing policy.* (1) Applications for exports and reexports of ''600 series'' items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. Other applications for exports and reexports described in paragraph (a)(1), (2), (6) or (7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States. Applications for reexports of items described in paragraph (a)(3) of this section will be reviewed applying the policies for similar commodities that are subject to the ITAR. Applications for export or reexport of items classified under any ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) of this section will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. Applications for export or reexport of ''parts,'' ''components,'' ''accessories,'' ''attachments,'' ''software,'' or ''technology'' ''specially designed'' or otherwise required for the F–14 aircraft will generally be denied.

PART 743—SPECIAL REPORTING AND NOTIFICATION

■ 31. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 32. The heading for part 743 is revised to read as set forth above.

■ 33. Section 743.1 is amended by adding two sentences at the end of paragraph (a) introductory text and by revising paragraph (c) to read as follows:

§ 743.1 Wassenaar Arrangement.

(a) * * * This section is limited to the Wassenaar Arrangement reporting requirements for items listed on the Wassenaar Arrangement's Dual-Use list. For reporting requirements for conventional arms listed on the Wassenaar Arrangement Munitions List that are subject to the EAR (i.e., ''600 series'' ECCNs), see § 743.4 of this part for Wassenaar Arrangement and United Nations reporting requirements.

* * * * *

(c) *Items for which reports are required.* You must submit reports to BIS under the provisions of this section only for exports of items on the

Sensitive List (see Supplement No. 6 to part 774 of the EAR).

* * * * *

■ 34. Add § 743.4 to read as follows:

§ 743.4 Conventional arms reporting.

(a) *Scope.* This section outlines special reporting requirements for exports of certain items listed on the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Participating States of the Wassenaar Arrangement exchange information every six months on deliveries to non-participating states of conventional arms set forth in the *Wassenaar Arrangement's Basic Documents* under Part II Guideline and Procedures, including the Initial Elements, Appendix 3: Specific Information Exchange on Arms Content by Category (at *www.wassenaar.org*), derived from the categories of the UN Register of Conventional Arms (at *www.un.org/disarmament/convarms/Register/*). Similar, although not identical, information is also reported by the U.S. Government to the United Nations on an annual basis. The reported information should include the quantity and the name of the recipient state and, except in the category of missiles and missile launchers, details of model and type. Such reports must be submitted to BIS semi-annually in accordance with the provisions of paragraph (f) of this section for items identified in paragraph (c)(1) and annually for items identified in paragraph (c)(2), and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports or transfers (in-country).

Note to paragraph (a): For purposes of § 743.4, the term ''you'' has the same meaning as the term ''exporter'', as defined in part 772 of the EAR.

(b) *Requirements.* You must submit one electronic copy of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) Exports authorized under License Exceptions LVS, TMP, RPL, STA, or GOV (see part 740 of the EAR);

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR); and

(3) Exports authorized under the Validated End User authorization (see § 748.15 of the EAR).

(c) *Items for which reports are required—.* (1) *Wassenaar Arrangement reporting.* You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [Reserved]

(ii) [Reserved]

(2) *United Nations reporting.* You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [Reserved]

(ii) [Reserved]

(d) *Country Exceptions for Wassenaar Arrangement reporting.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, identified in Supplement No. 1 to part 743 for reports required under paragraph (c)(1) of this section.

(e) *Information that must be included in each report.* (1) Each report submitted to BIS for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

Note to paragraph (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees.

(iii) Country of ultimate destination.

(f) *Frequency and timing of reports —* (1) *Semi-annual reports for items identified in paragraph (c)(1) of this section.* You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during six-month time periods from January 1 through June 30 and July 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than 180 days after the effective date of the rule that revises paragraph (c)(1) of this section to add the ECCN for the item being reported. Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(ii) Reports for the reporting period ending June 30 must be submitted to and received by BIS no later than August 1.

(iii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(2) *Annual reports for items identified in paragraph (c)(2) of this section.* You must submit reports subject to the provisions of this section annually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during twelve month time periods from January 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than 180 days after the effective date of the rule that revises paragraph (c)(1) of this section to add the ECCN for the item being reported. Thereafter, reports are due according to the provisions of paragraph (f)(2) of this section.

(ii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(g) *Submission of reports.* Information should be submitted in the form of a spreadsheet and emailed to *WAreports@BIS.DOC.GOV* or *UNreports@BIS.DOC.GOV.*

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel. (202) 482–0092, Fax: (202) 482–4094.

■ 35. Section 743.5 is added to read as follows:

§ 743.5 Prior notifications to Congress of Exports of ''600 Series Major Defense Equipment.''

(a) *General requirement.* Applications to export items on the Commerce Control List that are ''600 Series Major Defense Equipment'' will be notified to Congress as provided in this section before licenses for such items are issued.

(1) Exports of ''600 Series Major Defense Equipment'' to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR) do not require such notification.

(2) Exports of ''600 Series Major Defense Equipment'' that have been or will be described in a notification filed by the U.S. State Department under the Arms Export Control Act do not require such notification by BIS.

(b) BIS will notify Congress prior to issuing a license authorizing the export

of items to a country *outside* the countries listed in Country Group A:5 (see Supplement No.1 to part 740 of the EAR) that are sold under a contract that includes $14,000,000 or more of ''600 Series Major Defense Equipment.''

(c) BIS will notify Congress prior to issuing a license authorizing the export of items to a country listed in Country Group A:5 (see Supplement No.1 to part 740 of the EAR) that are sold under a contract that includes $25,000,000 or more of ''600 Series Major Defense Equipment.''

(d) In addition to information required on the application, the exporter must include a copy of the signed contract (including a statement of the value of the ''600 Series Major Defense Equipment'' items to be exported under the contract) for any proposed export described in paragraphs (b) or (c) of this section.

(e) *Address.* Munitions Control Division at *bis.compliance@bis.doc.gov.*

PART 744—[AMENDED]

■ 36. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 19, 2012, 77 FR 3067 (January 20, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 37. Section 744.17 is amended by revising the section heading and paragraph (d) to read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.'

* * * * *

(d) *Military end use.* In this section, the phrase 'military end use' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); commodities classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs; or any commodity that is designed for the ''use,'' ''development,'' ''production,'' or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List or classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs. Supplement No. 1 of this part lists examples of 'military end use.'

* * * * *

■ 38. Section 744.21 is amended by redesignating paragraphs (a), (a)(1) and (a)(2) as paragraphs (a)(1), (a)(1)(i) and (a)(1)(ii), by adding a new paragraph (a)(2), and by revising paragraph (f) to read as follows:

§ 744.21 Restrictions on certain 'military end uses' in the People's Republic of China (PRC).

(a)(1) * * *

(2) *General prohibition.* In addition to the license requirements for ''600 series'' items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any ''600 series'' item, including .y items described in a ''600 series'' ECCN, to the PRC without a license.

* * * * *

(f) In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs; or for the ''use,'' ''development,'' or ''production'' of military items described on the USML or the Wassenaar Arrangement Munitions List, or items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs.

* * *

* * * * *

PART 746—[AMENDED]

■ 39. The authority citation for part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR 2004 Comp., p. 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 40. Section 746.1 is amended by revising paragraph (b)(4) to read as follows:

§ 746.1 Introduction.

* * * * *

(b) * * *

(4) You may not use any License Exception, other than License Exception GOV, for items for personal or official use by personnel and agencies of the U.S. Government or agencies of cooperating governments as set forth in § 740.11(b) of the EAR, to export or reexport items with a UN reason for control to countries listed in paragraph (b)(2) of this section. This paragraph does not apply to Iraq, which is governed by § 746.3(c) of this part; North Korea, which is governed by § 746.4(c) of this part; or Iran, which is governed by § 746.7(c) of this part.

■ 41. Section 746.3 is amended by revising paragraph (b)(2) to read as follows:

§ 746.3 Iraq.

* * * * *

(b) * * *

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear nonproliferation (NP) reasons, as well as for any items controlled for crime control (CC) or United Nations (UN) reasons (including items classified under ECCN 0A986) or ECCNs that end in the number ''018'' or items classified under ''600 series'' ECCNs, that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial. Exports of ''600 series'' items to the Government of Iraq will be reviewed under the policies set forth for such items in §§ 742.4(b) and 742.6(b) of the EAR.

* * * * *

PART 748—[AMENDED]

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

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

■ 43. In § 748.1, paragraph (d) introductory text is amended by revising the first sentence to read as follows:

§ 748.1 General Provisions.

* * * * *

(d) *Electronic Filing Required.* All export and reexport license applications (other than Special Comprehensive License or Special Iraq Reconstruction License applications), encryption registrations, License Exception AGR notifications, requests to authorize use of License Exception STA for ''600 series'' end items (which are currently submitted as export license applications) and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP–R), unless BIS authorizes submission via the paper forms BIS 748–P (Multipurpose Application Form), BIS–748P–A (Item Appendix) and BIS–748P–B, (End-User Appendix).

* * *

* * * * *

■ 44. Section 748.3 is amended by adding paragraph (e) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption registrations.

* * * * *

(e) *Classification requests to confirm that a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''specially designed.''* (1) *Scope.* If you have a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' that is ''specially designed'' on the basis of paragraph (a)(1) or (2) of the ''specially designed'' definition in § 772.1 of the EAR, you may submit a request in accordance with the procedures in § 748.1 to confirm that the item is not ''specially designed'' provided you meet the following criteria:

(i) The ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' does not meet the criteria of exclusion paragraph (b)(3) of the ''specially designed'' definition, but would meet the criteria if the minor changes in form or fit were determined to be insignificant by the U.S. Government.

(ii) The performance capabilities of the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' are the same as those of a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' that would meet the criteria of exclusion paragraph (b)(3) of the definition of ''specially designed'' in § 772.1 of the EAR.

(2) *Information to be provided.* Applicants wishing to submit a CCATS requesting confirmation that a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''specially designed'' must submit classification requests in accordance with the procedures in § 748.1 and general provisions regarding submitting classification requests in § 748.3(b). In addition, applicants must submit additional information identified in this paragraph (e)(2).

(i) The classification request must indicate in Block 24 or in a separate PDF attachment included with the CCATS submission that the ''part,'' ''component,'' ''accessory,'' ''attachment'' or ''software'' would meet the criteria in paragraph (e)(1)(i) and (ii) of this section;

(ii) A detailed explanation must be provided regarding all changes in form and fit; *and*

(iii) A rationale must be provided that explains why such changes in form and fit should be treated as minor or insignificant in terms of their role in the performance capabilities of the enumerated item.

(3) *U.S. Government Review.* Commodity classification requests submitted pursuant to § 748.3(e) are reviewed by the Departments of Commerce, State and Defense. A consensus determination is required to confirm that a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''specially designed'' on the basis of this paragraph. The interagency review process will ensure U.S. national security and foreign policy interests are evaluated prior to any confirmation pursuant to § 748.3(e). The interagency review will consider on a case-by-case basis whether a particular ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is ''specially designed'' taking into account all the following:

(i) The insignificance of the changes in form and fit;

(ii) The overall role of the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' in the performance capabilities of the enumerated item that it is used in or with;

(iii) How substantively common it is to the other ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' that would meet the paragraph (b)(3) criteria;

(iv) Whether such a confirmation would be consistent with U.S. Government multilateral export control regime commitments; *and*

(v) Any other criteria that may be relevant in determining whether the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is ''specially designed,'' including an evaluation of how such a confirmation may affect U.S. national security and foreign policy interests.

(4) *CCATS response.* The BIS response to the CCATS request will reflect the interagency consensus determination and the response will be made in accordance with the procedures in §§ 748.1 and 748.3(b). In addition, the BIS response will indicate one of the following:

(i) The ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''specially designed'' on the basis of being within the scope of paragraph (b)(3) because the changes in form and fit have been determined by the U.S. Government to be minor or insignificant. In such cases, the new classification, which may be EAR99 or in another ECCN entry that does not use ''specially designed,'' will be provided as part of the BIS response;''

(ii) The request under § 748.3(e) has been denied and the ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' continues to be classified under a ''specially designed'' 'catch-all' (see the definition of ''specially designed'' in § 772.1 of the EAR). The response will also include a determination regarding where the ''specially designed'' ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is classified on the CCL; or

(iii) Returned without action (RWA) because insufficient information was provided or information was not provided in a timely fashion. These requests will be reviewed closely, and they will likely require additional follow up questions of applicants, so responding to such requests in a timely fashion will be an important part of the process to ensure such requests are considered by the U.S. Government.

Note to paragraph (e): Although these requests for confirmation that an item is not ''specially designed'' are also reviewed by the Departments of State and Defense, similar to § 748.3(b)(3), the public is reminded that neither the BIS classification nor the CCATS number may be relied upon or cited as evidence that the U.S. Government has determined that the ''parts,'' ''components,'' ''accessories,'' ''attachments'' and ''software'' described in the commodity classification determination or a release made from ''specially designed'' pursuant to § 748.3(e) are subject to the EAR (see § 734.3 of the EAR).

■ 45. Section 748.8 is amended by adding paragraphs (w) and (x) to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(w) License Exception STA eligibility requests for ''600 series'' end items.

(x) License application for ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other approval.

■ 46. Supplement No. 1 to part 748 (BIS–748P, BIS–748P–A: Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions) is amended by:

■ a. Adding a sentence to the end of Block 5;

■ b. Adding a sentence to the end of Block 6; and

■ c. Adding five sentences to the end of Block 24, to read as follows:

Supplement No. 1 to Part 748—Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions

* * * * *

Block 5: * * *

If you are submitting a License Exception STA eligibility request pursuant to § 740.20(g), mark the box labeled ''Export'' with an +X) and then proceed to Block 6 of this supplement for instructions specific to such requests.

Block 6: * * *

Mark the ''Other'' box with an (X) and insert the phrase ''STA request'' for the description of the support document to submit a request for License Exception STA eligibility pursuant to § 740.20(g). (See Supplement No. 2 to part 748 under paragraph (w) for unique application and submission requirements for License Exception STA eligibility requests described under this Block 6.)

* * * * *

Block 24: Additional Information

This Block should be completed if your application includes a ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other approval. Enter the previous State license number or other approval identifier in Block 24 of the BIS license application. If more than one previous State license number or other approval identifier is applicable, then enter the most recent one. Only those license applications where the particulars of the EAR license application are equivalent as previously authorized under the ITAR license or other approval in regard to the description of the item (including the item's function, performance capabilities, form and fit), purchaser, ultimate consignee and end users on the license will receive full consideration under this paragraph, which may result in a quicker processing time. The classification of the ''600 series'' item in question will no longer be the same because the item would no longer be ''subject to the ITAR,'' but all other aspects of the description of the item must be the same in order to be reviewed under this expedited process under paragraph (x)of Supplement No. 2 to part 748 of the EAR.4.)

* * * * *

■ 47. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraphs (w) and (x) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(w) *License Exception STA eligibility requests for ''600 series'' end items.* To request a License Exception STA eligibility requests for ''600 series'' end items pursuant to § 740.20(g), you must mark an (X) in the ''Export'' box in Block 5 (Type of Application) block. You must mark an (X) in the ''Other'' box and insert the phrase ''STA request'' '' in Block 6 (Documents submitted with application) block. You must include the specific ''600 Series'' ECCN in Block 22. In addition to the ECCN, you will need to provide sufficient information for the U.S. Government to make a determination as to STA eligibility. This will require you to submit more than merely a description of the end item. In particular, you will need to provide supporting information for why you believe that the end item does not, for example, provide a critical military or intelligence advantage to the United States or is available in countries that are not regime partners or close allies. You will also need to provide information regarding whether and, if so, how the end item is controlled by the export control laws and regulations of close allies and regime partners, if known. If you are not able to provide some of the information described above, the U.S. Government will still evaluate the request, including using resources and information that may only be available to the U.S. Government. However, when submitting such requests you are encouraged to provide as much information as you can based on the criteria noted above to assist the U.S. Government in evaluating these License Exception STA eligibility requests. In addition, you should provide BIS with the text you would propose BIS use in describing the end item in the appropriate ''600 series'' ECCN and the online table referenced in § 740.20(g)(5)(i) in anticipation that the request may be approved pursuant to § 740.20(g). You may submit additional information that you believe is relevant to the U.S. Government in reviewing the License Exception STA eligibility request as part of that support document or as an additional separate support document attachment to the license application.

(x) *License application for a ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other license authority.* To request that the U.S. Government review of a license application for a ''600 series'' item also take into consideration a previously approved ITAR license or other approval, applicants must also include the State license number or other approval identifier in Block 24 of the BIS license application (See the instructions in Supplement No. 1 to part 748 under Block 24).

Note to paragraph (x): License applications submitted under paragraph (x) will still be reviewed in accordance with license review procedures and timelines identified in part 750, including §§ 750.3 and 750.4. Applicants are advised that including a previously approved State license or other approval may have no effect on the license review process since each application is reviewed on its own merits at the time of submission. However, in some cases, previous licensing history may result in license applications being reviewed more quickly.

PART 750—[AMENDED]

■ 48. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 49. Section 750.4 is amended by adding paragraph (b)(7) to read as follows:

§ 750.4 Procedures for processing license applications.

* * * * *

(b) * * *

(7) *Congressional Notification.* Congressional notification, including any consultations prior to notification, prior to the issuance of an authorization to export when notification is required by § 743.5 of the EAR.

■ 50. Section 750.7 is amended by adding paragraph (c)(1)(ix) and revising paragraphs (g) introductory text and (g)(1) introductory text to read as follows:

§ 750.7 Issuance of licenses.

(c) * * *

(1) * * *

(ix) Direct exports, reexports, or transfers (in-country) to and among approved end users on a license, provided those end users are listed by name and location on such license *and* the license does not contain any conditions specific to the ultimate consignee that cannot be complied with by the end user, such as a reporting requirement that must be made by the ultimate consignee. Reexports and transfers (in-country) among approved end users may be further limited by license conditions.

* * * * *

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a four-year validity period, unless a different validity period has been requested and specifically approved by BIS or is otherwise specified on the license at the time that it is issued. Exceptions from the four-year validity period include license applications for items controlled for

short supply reasons, which will be limited to a 12-month validity period and license applications reviewed and approved as an ''emergency'' (see § 748.4(h) of the EAR). Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first business day following the expiration date.

(1) *Extended validity period.* BIS will consider granting a validity period exceeding 4 years on a case-by-case basis when extenuating circumstances warrant such an extension. Requests for such extensions may be made at the time of application or after the license has been issued and it is still valid. BIS will not approve changes regarding other aspects of the license, such as the parties to the transaction and the countries of ultimate destination. An extended validity period will generally be granted where, for example, the transaction is related to a multi-year project; when the period corresponds to the duration of a manufacturing license agreement, technical assistance agreement, warehouse and distribution agreement, or license issued under the International Traffic in Arms Regulations; when production lead time will not permit an export or reexport during the original validity period of the license; when an unforeseen emergency prevents shipment within the 4-year validity of the license; or for other similar circumstances.

* * * * *

PART 756—[AMENDED]

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

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

■ 52. Section 756.1 is amended by adding paragraph (a)(4) to read as follows:

§ 756.1 Introduction.

(a) * * *

(4) A decision on whether License Exception STA is available for ''600 series'' ''end items'' pursuant to § 740.20(g).

* * * * *

PART 758—[AMENDED]

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

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

■ 54. Section 758.1 is amended by revising the section heading, redesignating paragraphs (b)(3) through (5) as paragraphs (b)(5) through (7), and by adding new paragraphs (b)(3) and (4) to read as follows:

§ 758.1 The Automated Export System (AES) record.

* * * * *

(b) * * *

(3) For all exports of ''600 series'' items enumerated in paragraphs .a through .x of a ''600 series'' ECCN regardless of value or destination, including exports to Canada;

(4) For all exports under License Exception Strategic Trade Authorization (STA);

* * * * *

■ 55. Section 758.2 is amended by adding paragraph (c)(4) to read as follows:

§ 758.2 Automated Export System (AES).

* * * * *

(c) * * *

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under Authorization Validated End User (VEU); or are of ''600 series'' items.

■ 56. Section 758.5 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee or end user as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BIS, the information entered on related export control documents (*e.g.,* the AES record, bill of lading or air waybill) must be consistent with the license.

(c) Issuance of the bill of lading or air waybill. (1) *Ports in the country of the ultimate consignee or end user.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of an intermediate consignee, ultimate consignee, or end user named on the BIS license and in the AES record.

(2) *Optional ports of unloading.* (i) *Licensed items.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BIS license and in the AES record.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading in AES record and on other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license.

(d) *Delivery of items.* No person may deliver items to any country other than the country of an intermediate consignee, ultimate consignee, or end user named on the BIS license and AES record without prior written authorization from BIS, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

* * * * *

■ 57. Section 758.6 is revised to read as follows:

§ 758.6 Destination control statement and other information furnished to consignees.

(a) *General requirement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: ''These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.''

(b) *Additional requirement for ''600 series'' items.* In addition to the DCS as required in paragraph (a) of this section, the ECCN for each ''600 Series'' item being exported must be printed on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad.

PART 762—[AMENDED]

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

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

■ 59. Section 762.2 is amended by:

■ a. Revising paragraphs (b)(5), (7), (10), and (13);

■ b. Removing the ''and'' at the end of the paragraph (b)(48);

■ c. Removing the period at the end of paragraph (b)(49) and adding a semi-colon in its place; and

■ d. Adding paragraphs (b)(50) and (51).

The revisions and additions read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(5) § 740.9(a)(3)(i)(B), Tools of trade: Temporary exports, reexports, and transfers (in country) of technology by U.S. persons (TMP);

* * * * *

(7) § 740.11(b)(2)(iii) and (iv), Exports, reexports and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government and Items exported at the direction of the U.S. Department of Defense (GOV);

* * * * *

(10) § 740.20(g), Responses to License Exception STA eligibility requests for ''600 series'' end items (STA);

* * * * *

(13) § 743.4(c)(1) and (c)(2), Conventional arms reporting;

* * * * *

(50) § 772.2, ''Specially designed'' definition, note to paragraphs (b)(4), (b)(5), and (b)(6); and

(51) § 740.20, note to paragraph (c)(1), License Exception STA prior approval on a BIS or DDTC license (STA).

PART 764—[AMENDED]

■ 60. The authority citation for part 764 continues to read as follows:

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

Supplement No. 1 to Part 764 [Amended]

■ 61. Supplement No. 1 to part 764 is amended by removing the penultimate paragraph.

PART 770—[AMENDED]

■ 62. The authority citation for part 770 continues to read as follows:

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

§ 770.2 [Amended]

■ 63. Section 770.2 is amended by removing and reserving paragraphs (i) and (j).

PART 772—[AMENDED]

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

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

■ 65. Section 772.1 is amended by:

■ a. Revising the definitions of ''dual use,'' ''military commodity,'' and ''specially designed;'' and

■ b. Adding, in alphabetical order, the following twelve definitions for the terms ''600 series,'' ''600 Series Major Defense Equipment'' or ''MDE,'' ''accessories,'' ''attachments,'' ''build-to-print technology,'' ''component,'' ''end item,'' ''equipment,'' ''facilities,'' ''material,'' ''part,'' and ''system''.

The revisions and additions read as follows:

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

* * * * *

600 series. ECCNs in the ''xY6zz'' format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The ''6'' indicates the entry is a munitions entry on the CCL. The ''x'' represents the CCL category and ''Y'' the CCL product group. The ''600 series'' constitutes the munitions ECCNs within the larger CCL. *600 Series Major Defense Equipment* or *MDE.* Any item listed in ECCN 9A610.a, 9A619.a, 9A619.b or 9A619.c, having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

Note to ''600 Series Major Defense Equipment'': For the most current list of MDE, see Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) to DoD 5105.38–M, ''Security Assistance Management Manual (SAMM),'' dated 04/30/2012, available online at *http://www.dsca.osd.mil/samm/ESAMM/Appendix01.htm. Accessories.* These are associated items for any ''component,'' ''end item,'' or ''system,'' and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, ''accessories'' and ''attachments'' will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain. For purposes of this definition, ''accessories'' and ''attachments'' are the same.

* * * * *

Attachments. These are associated items for any ''component,'' ''end item,'' or ''system,'' and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, ''accessories'' and ''attachments'' will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain. For purposes of this definition, ''attachments'' and ''accessories'' are the same.

* * * * *

Build-to-Print technology. (1) This is ''production'' ''technology'' that is sufficient for an inherently capable end user to produce or repair a commodity from engineering drawings without:

(i) Revealing ''development'' ''technology,'' such as design methodology, engineering analysis, detailed process or manufacturing know-how;

(ii) Revealing the production engineering or process improvement aspect of the ''technology;'' or

(iii) Requiring assistance from the provider of the technology to produce or repair the commodity.

(2) Acceptance, test, or inspection criteria pertaining to the commodity at issue is included within the scope of ''build-to-print technology'' only if it is the minimum necessary to verify that the commodity is acceptable.

* * * * *

Component. This is an item that is useful only when used in conjunction with an ''end item.'' ''Components'' are also commonly referred to as assemblies. For purposes of this definition an assembly and a ''component'' are the same. There are two types of ''components'': ''Major components'' and ''minor components.'' A ''major component'' includes any assembled element which forms a portion of an ''end item'' without which the ''end item'' is inoperable. For example, for an automobile, ''components'' will include the engine, transmission, and battery. If you do not have all those items, the automobile will not function, or function as effectively. A ''minor component'' includes any assembled element of a ''major component.'' ''Components'' consist of ''parts.'' References in the CCL to ''components'' include both ''major components'' and ''minor components.''

* * * * *

Dual use. Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items and certain munitions items listed

on the Wassenaar Arrangement Munitions List (WAML) or the Missile Technology Control Regime Annex are also subject to the EAR (see § 734.2(a) of the EAR).

* * * * *

End item. This is an assembled commodity ready for its intended use. Only ammunition, fuel or other energy source is required to place it in an operating state. Examples of end items include ships, aircraft, computers, firearms, and milling machines.

* * * * *

Equipment. This is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized function of an end item or system.

* * * * *

Facilities. This means a building or outdoor area in which people use an item that is built, installed, produced, or developed for a particular purpose.

* * * * *

Material. This is any list-specified crude or processed matter that is not clearly identifiable as any of the types of items defined in § 772.1 under the defined terms, ''end item,'' ''component,'' ''accessories,'' ''attachments,'' ''part,'' ''software,'' ''system, ''equipment,'' or ''facilities.'' The exclusion from the definition of material for clearly identifiable items defined in § 772.1, such as for ''parts'' and ''components,'' does not apply to the following ECCNs: 1C233, 1C234, 1C235, 1C236, 1C237, 1C239, 1C350, 1C395, 1C991, 1C992, and 1C995.

* * * * *

Military commodity. As used in § 734.4(a)(5), Supplement No. 1 to part 738 (footnote No. 3), §§ 740.2(a)(11), 740.16(a)(2), 740.16(b)(2), 742.6(a)(3), 744.9(a)(2), 744.9(b), ECCN 0A919 and (*Related Controls*) in ''600 series'' ECCNs, ''military commodity'' or ''military commodities'' means an article, material, or supply that is described on the U.S. Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but does not include software, technology and any item listed in any ECCN for which the last three numerals are 018 or any item in the ''600 series.''

* * * * *

Part. This is any single unassembled element of a ''component,'' ''accessory,'' or ''attachment'' which is not normally subject to disassembly without the destruction or the impairment of design use. Examples include threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire.

* * * * *

Specially designed. When applying this definition, follow this sequential analysis set forth below. (For additional guidance on the order of review of ''specially designed,'' including how the review of the term relates to the larger CCL, see Supplement No. 4 to Part 774 of the EAR—Commerce Control List Order of Review.)

(a) Except for items described in (b), an ''item'' is ''specially designed'' if it:

(1) As a result of ''development'' has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; *or*

(2) Is a ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' for use in or with a commodity or defense article 'enumerated' or otherwise described on the CCL or the USML.

(b) A ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' that would be *controlled* by paragraph (a) is not ''specially designed'' if it:

(1) Has been identified to be in an ECCN paragraph that does not contain ''specially designed'' as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e);

(2) Is, regardless of 'form' or 'fit,' a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder;

(3) Has the same function, performance capabilities, and the same or 'equivalent' form and fit, as a commodity or software used in or with an item that:

(i) Is or was in ''production'' (*i.e.,* not in ''development''); *and*

(ii) Is either not 'enumerated' on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(4) Was or is being developed with ''knowledge'' that it would be for use in or with commodities or software (i) described in an ECCN *and* (ii) also commodities or software either not 'enumerated' on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(5) Was or is being developed as a general purpose commodity or software, i.e., with no ''knowledge'' for use in or with a particular commodity (e.g., an F/A–18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); *or*

(6) Was or is being developed with ''knowledge'' that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.

Note 1: 'Enumerated' refers to any item (i) on either the USML or CCL not controlled in a 'catch-all' paragraph and (ii) when on the CCL, controlled by an ECCN for more than Anti-Terrorism (AT) reasons only. An example of an 'enumerated' ECCN is 2A226, which controls valves with the following three characteristics: a ''nominal size'' of 5 mm or greater; having a bellows seal; *and* wholly made of or lined with aluminum, aluminum alloy, nickel, or nickel alloy containing more than 60% nickel by weight. The CCL also contains notes excluding from control ''parts'' and ''components'' ''specially designed'' for uncontrolled items. Such uncontrolled items are merely 'described' and are not 'enumerated.' Note 2 to ECCN 1A002 is an example of items excluded from control based on being ''specially designed'' for a 'described' item. Commodities or software in an ECCN controlled only for AT reasons are other examples of items 'described' on the CCL. ECCN 2B996, which controls dimensional inspection or measuring systems or equipment not controlled by 2B006, is an example of a commodity 'described' in an ECCN controlled only for AT reasons.

Note 2: A 'catch-all' paragraph is one that does not refer to specific types of ''parts,'' ''components,'' ''accessories,'' or ''attachments'' but rather controls non-specific ''parts,'' ''components,'' ''accessories,'' or ''attachments'' because they were ''specially designed'' for an enumerated item. For example, ECCN paragraph 9A610.x is a catch-all, because it controls ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for military aircraft, but does not identify specific types of ''parts,'' ''components,'' ''accessories,'' or ''attachments'' within its control. Another example of a 'catch-all' is the heading of 7A102, which controls ''specially designed'' components for the gyros enumerated in 7A102, but does not identify the specific types of ''components'' within its control.

Note to paragraph (a)(1): Items that as a result of ''development'' have properties peculiarly responsible for achieving or exceeding the performance levels, 'functions' or characteristics in a relevant ECCN paragraph may have properties shared by different products. For example, ECCN

1A007 controls equipment and devices, specially designed to initiate charges and devices containing energetic materials, by electrical means. An example of equipment not meeting the peculiarly responsible standard under paragraph (a)(1) is a garage door opener, that as a result of ''development'' has properties that enable the garage door opener to send an encoded signal to another piece of equipment to perform an action (i.e., the opening of a garage door). The garage door opener is not ''specially designed'' for purposes of 1A007 because although the garage door opener could be used to send a signal by electrical means to charges or devices containing energetic materials, the garage door opener does not have properties peculiarly responsible for a achieving or exceeding the performance levels, 'functions' or characteristics in 1A007. For example, the garage door opener is designed to only perform at a limited range and the level of encoding is not as advanced as the encoding usually required in equipment and devices used to initiate charges and devices containing energetic materials, by electrical means. Conversely, another piece of equipment that, as a result of ''development,'' has the properties (e.g., sending a signal at a longer range, having signals with advanced encoding to prevent interference, and having signals that are specific to detonating blasting caps) needed for equipment used to initiate charges and devices containing energetic materials, would be peculiarly responsible because the equipment has a direct and proximate causal relationship that is central or special for achieving or exceeding the performance levels, 'functions' or characteristics identified in 1A007.

Note 1 to paragraph (b)(3): Commodities in ''production'' that are subsequently subject to ''development'' activities, such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF)), including those pertaining to quality improvements, cost reductions, or feature enhancements, remain in ''production.'' However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in ''development'' until and unless they enter into ''production.''

Note 2 to paragraph (b)(3): With respect to a commodity, 'equivalent' means that its form has been modified solely for 'fit' purposes.

Note 3 to paragraph (b)(3): The 'form' of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The ''fit' of a commodity is defined by its ability to physically interface or interconnect with or become an integral part of another item. The 'function' of the item is the action or actions it is designed to perform. 'Performance capability' is the measure of a commodity's effectiveness to perform a designated function in a given environment (e.g., measured in terms of speed, durability, reliability, pressure, accuracy, efficiency). For software, 'form' means the design, logic flow, and algorithms. 'Fit' means the ability to interface or connect with an item subject to the EAR. The 'function' means the action or actions it performs directly to an item subject to the EAR or as a stand-alone application. 'Performance capability' means the measure of software's effectiveness to perform a designated function.

Note to paragraphs (b)(4), (b)(5) and (b)(6): For a commodity or software to be not ''specially designed'' on the basis of paragraphs (b)(4), (b)(5) *or* (b)(6), documents contemporaneous with its ''development,'' in their totality, must establish the elements of paragraphs (b)(4), (b)(5) *or* (b)(6). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the ''commodity'' may not be excluded from being ''specially designed'' by paragraphs (b)(4), (b)(5) *or* (b)(6).

* * * * *

System. This is a combination of ''end items,'' ''parts,'' ''components,'' ''accessories,'' ''attachments,'' firmware, or ''software'' that are designed, modified or adapted to operate together to perform a specialized 'function.'

* * * * *

PART 774—[AMENDED]

■ 66. The authority citation paragraph for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 67. In Supplement No. 1 to part 774 (the Commerce Control List) is amended by:

■ a. Removing the Product Group A heading, in all 10 categories of the CCL, ''SYSTEMS, EQUIPMENT AND COMPONENTS'' and adding in its place the Product Group A heading ''END ITEMS,'' ''EQUIPMENT,'' ''ACCESSORIES,'' ''ATTACHMENTS,'' ''PARTS,'' ''COMPONENTS,'' AND ''SYSTEMS'';

■ b. Adding quotes around the term ''PRODUCTION EQUIPMENT'' in the heading of Product Group B in all 10 categories of the CCL; and

■ c. Adding quotes around the Product Group C heading ''MATERIALS'' in all 10 categories of the CCL;

■ d. Adding quotes around the Product Group D heading ''SOFTWARE'' in all 10 categories of the CCL; and

■ e. Adding quotes around the Product Group E heading ''TECHNOLOGY'' in all 10 categories of the CCL.

■ 68. Supplement No. 1 to part 774 is amended by removing the phrase ''eight destinations listed in § 740.20(c)(2) of the EAR'' wherever it is found and adding in its place ''destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR'').

■ 69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0–, ECCN 0A919 is amended by revising the heading and the ''Related Controls,'' ''Related Definitions,'' and ''Items'' paragraphs to read as follows:

0A919 ''Military Commodities'' Located and Produced Outside the United States as Follows (see list of items controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) ''Military commodities'' are subject to the export licensing jurisdiction of the Department of State if they incorporate items that are subject to the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130). (2) ''Military commodities'' described in this paragraph are subject to the export licensing jurisdiction of the Department of State if such commodities are described on the U.S. Munitions List (22 CFR Part 121) and are in the United States. (3) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles that are subject to the ITAR; or the furnishing to foreign persons of any technical data controlled under 22 CFR 121.1 whether in the United States or abroad are under the licensing jurisdiction of the Department of State. (4) Brokering activities (as defined in 22 CFR 129) of ''military commodities'' that are subject to the ITAR are under the licensing jurisdiction of the Department of State.

Related Definitions: ''Military commodity'' or ''military commodities'' means an article, material or supply that is described on the U.S. Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (i.e., the Wassenaar Arrangement Munitions List (WAML)), but does not include software, technology, any item listed in any ECCN for which the last three numerals are 018, or any item in the ''600 series.''

Items:

a. ''Military commodities'' produced and located outside the United States having all of the following characteristics:

a.1. Not subject to the International Traffic in Arms Regulations (22 CFR Parts 120–130); *and*

a.2. Having one or more of the following characteristics:

a.2.a. Incorporate one or more cameras controlled under ECCN 6A003.b.3, .b.4.b, or .b.4.c.

a.2.b. Incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content (see § 734.4 of the EAR); *or*

a.2.c. Are direct products of U.S.-origin ''600 series'' technology (see § 736.2(b)(3) of the EAR).

b. [RESERVED]

■ 70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A018 is amended by:

■ a. Removing the phrase ''9A018.a and b'' and adding in its place ''9A018.b'' in the RS paragraph of the License Requirements section;

■ b. Revising the ''Related Controls'' and ''Related Definitions'' paragraph in the List of Items Controlled section, as set forth below; and

■ c. Revising the ''Items'' paragraph in the List of Items Controlled section by removing and reserving paragraph .a, and by removing paragraphs .c through .f.

9A018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for: (a) all military ground vehicles and ''components'' therefor as described in 22 CFR 121, Category VII; and (b) vehicles that have been armed or armored with articles described in 22 CFR 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR 121, Category VII, see § 770.2(h) Interpretation 8: ''Ground vehicles''. (2) See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as ''parts,'' ''accessories,'' and ''attachments'' for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (3) See ECCN 9A619 for military trainer aircraft turbo prop engines and ''parts'' and ''components'' therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: N/A

Items: a. [Reserved]

b. * * *

■ 71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9— Aerospace and Propulsion, ECCN 9D018 is amended by:

■ a. Removing the phrase ''9A018.a and .b'' and adding in its place ''9A018.b'' in the RS paragraph of the ''License Requirements'' section; and

■ b. Revising the ''Related Controls'' paragraph in the ''List of Items Controlled'' section, to read as follows:

9D018 ''Software'' for the ''use'' of equipment controlled by 9A018.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCN 9D610 for ''software'' related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and ''parts,'' ''accessories,'' and ''attachments'' for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (2) See ECCN 9D619 for ''software'' related to military trainer aircraft turbo prop engines and ''parts'' and ''components'' therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: * * *

Items: * * *

■ 72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E018 is amended by:

■ a. Removing the phrase ''9A018.a and .b'' and adding in its place ''9A018.b'' in the RS paragraph of the License Requirements section; and

■ b. Revising the ''Related Controls'' paragraph, to read as follows:

9E018 ''Technology'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 9A018.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCN 9E610 for ''technology'' related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and ''parts,'' ''accessories,'' and ''attachments'' for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. (2) See ECCN 9E619 for ''technology'' related to military trainer aircraft turbo prop engines and ''parts'' and ''components'' therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

Related Definitions: * * *

Items: * * *

■ 73. In Supplement No. 1 to part 774, Category 9, add new Export Control Classification Numbers 9A610 and 9A619 between Export Control Classification Numbers 9A120 and 9A980 to read as follows:

9A610 Military aircraft and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart*
NS applies to entire entry except 9A610.u, .v, .w, and .y.	NS Column 1
RS applies to entire entry except 9A610.y.	RS Column 1
MT applies to 9A610.u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., ''end item'' military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

List of Items Controlled

Unit: ''End items'' in number; ''parts,'' ''components,'' ''accessories,'' and ''attachments'' in $ value

Related Controls: Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.

Related Definitions: N/A

Items:

a. 'Military Aircraft' ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: *For purposes of paragraph .a the term 'military aircraft' includes the following types of aircraft to the extent they were ''specially designed'' for a military use, and are not enumerated in USML paragraph VIII(a): trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft, and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are ''unmodified'' for the purposes of this paragraph .a.*

Note 2: *9A610.a does not control ' military aircraft' that:*

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. [Reserved].

c. [Reserved].

d. [Reserved].

e. [Reserved].

f. 'Ground equipment' ''specially designed'' for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

Technical Note: *'Ground equipment' includes pressure refueling equipment and equipment designed to facilitate operations in confined areas.*

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete canopies, harnesses, platforms, electronic release mechanisms ''specially designed'' for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and ''equipment'' ''specially designed'' for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, ''specially designed'' for use by a military.

k. through s. [Reserved]

t. Military aircraft instrument flight trainers that are not ''specially designed'' to simulate combat. (See USML Cat IX for controls on such trainers that are ''specially designed'' to simulate combat.)

u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or the CCL.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A610.x are controlled by ECCN 9A610.x.*

Note 2: *''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory VIII(f) or VIII(h) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in ECCN 9A610.y are subject to the controls of that paragraph.*

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities ''specially designed'' for a military use, as follows:

y.1. Aircraft tires;

y.2. Analog cockpit gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;

y.9. Galleys;

y.10. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, nutplates, and brackets;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Mirrors, cockpit;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered cockpit panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO_2 detectors; and

y.28. Map cases.

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; *and* do not incorporate weapons enumerated on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

9A619 Military gas turbine engines and related commodities.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry except 9A619.y.	NS Column 1
RS applies to entire entry except 9A619.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A619.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9A619.

List of Items Controlled

Unit: ''End items'' in number; ''parts,'' ''components,'' ''accessories,'' and ''attachments'' in $ value.

Related Controls: (1) Military gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.

Related Definitions: N/A

Items:

a. ''Military Gas Turbine Engines'' ''specially designed'' for a military use that are not controlled in USML Category XIX(a), (b), (c), or (d).

Note: For purposes of ECCN 9A619.a, the term ''military gas turbine engines'' means gas turbine engines ''specially designed'' for ''end items'' enumerated in USML Category VIII or on the CCL under ECCN 9A610.

b. Digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this ECCN 9A619.

c. If ''specially designed'' for gas turbine engines controlled in 9A619.a, hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles);

d. If ''specially designed'' for gas turbine engines controlled in 9A619.a, uncooled turbine blades, vanes, disks, and tip shrouds;

e. If ''specially designed'' for gas turbine engines controlled in 9A619.a, combustor cowls, diffusers, domes, and shells;

Note: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A619.c are controlled by ECCN 9A619.c.

f. Engine monitoring systems (i.e., those that conduct prognostics, diagnostics, and monitor health) ''specially designed'' for gas turbine engines and components controlled in this ECCN 9A619.

g. through w. [Reserved]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by this ECCN 9A619 (other than ECCN 9A619.c) or for a defense article enumerated in USML Category XIX and not specified elsewhere in the CCL or on the USML.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A619.x are controlled by ECCN 9A619.x.

Note 2: ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory XIX(f) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in ECCN 9A619.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN 9A619 or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other aircraft commodities, as follows:

y.1. Oil tank and reservoirs;

y.2. Oil lines and tubes;

y.3. Fuel lines and hoses;

y.4. Fuel and oil filters;

y.5. V-Band, cushion, ''broomstick,'' hinged, and loop clamps;

y.6. Shims;

y.7. Identification plates;

y.8. Air, fuel, and oil manifolds.

■ 74. In Supplement No. 1 to part 774, Category 9, add new ECCNs 9B610 and 9B619 between ECCNs 9B117 and 9B990 to read as follows:

9B610 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 9A610 or USML Category VIII.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart*
NS applies to entire entry except 9B610.c.	NS Column 1
RS applies to entire entry.	RS Column 1
MT applies to 9B610.c.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9B610.

List of Items Controlled

Unit: N/A
Related Controls: USML Category VIII(h)(i) controls parts, components, accessories, and attachments specially designed for various models of stealth and low-observable aircraft.
Related Definitions: N/A
Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production,'' ''development,'' repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A610 (except 9A610.y) or USML Category VIII, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

b. Environmental test facilities ''specially designed'' for the certification, qualification, or testing of commodities enumerated in ECCN 9A610 (except for 9A610.y) or USML Category VIII and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

c. ''Production facilities'' designed or modified for UAVs or drones that are (i) controlled by either USML paragraph VIII(a) or ECCN 9A610.a and (ii) capable of a range equal to or greater than 300 km.

9B619 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 9A619 or USML Category XIX.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry except 9B619.y.	NS Column 1
RS applies to entire entry except 9B619.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9B619.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9B619.

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production,'' ''development,'' repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A619 (except for 9A619.y) or in USML Category XIX, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

b. Equipment, cells, or stands ''specially designed'' for testing, analysis and fault isolation of engines, ''systems,'' ''components,'' ''parts,'' ''accessories,'' and ''attachments'' specified in ECCN 9A619 on the CCL or in Category XIX on the USML.

c. through x. [Reserved]

y. Bearing pullers ''specially designed'' for the -''production'' or ''development'' of commodities enumerated in ECCN 9A619 (except for 9A619.y) or USML Category XIX and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

■ 75. In Supplement No. 1 to part 774, Category 9, add new ECCNs 9C610 and 9C619 between ECCNs 9C110 and the product group header that reads ''D. Software'' to read as follows:

9C610 Materials ''specially designed'' for commodities controlled by 9A610 not elsewhere specified in the CCL or the USML.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9C610.

List of Items Controlled

Unit: N/A
Related Controls: USML subcategory XIII(f) controls structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML subcategory VIII(a) aircraft. See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. Materials not elsewhere specified in the USML or the CCL and ''specially designed'' for commodities enumerated in ECCN 9A610 (except 9A610.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both aircraft enumerated in USML Category VIII and aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. [Reserved].

9C619 Materials ''specially designed'' for commodities controlled by 9A619 not elsewhere specified in the CCL or on the USML.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9C619.

List of Items Controlled

Unit: $ value
Related Controls: (1) See USML subcategory XIII(f) for controls on structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML Category XIX engines. (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. Materials not elsewhere specified in the CCL or on the USML and ''specially designed'' for commodities enumerated in ECCN 9A619 (except for 9A619.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. [Reserved].

■ 76. In Supplement No. 1 to part 774, Category 9, add new ECCNs 9D610 and 9D619 between ECCNs 9D105 and 9D990 to read as follows:

9D610 Software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, or materials controlled by 9C610.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	Country chart
NS applies to entire entry except 9D610.y.	NS Column 1
RS applies to entire entry except 9D610.y.	RS Column 1
MT applies to software ''specially designed'' for the operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled for MT reasons in 9A610 or 9B610.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9D610.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D610.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 9D610.

List of Items Controlled

Unit: $ value
Related Controls: Software directly related to articles enumerated in USML Category VIII is subject to the control of USML paragraph VIII(i).
Related Definitions: N/A
Items:

a. ''Software'' (other than software controlled in paragraphs .b or .y of this entry) ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 9A610, ECCN 9B610, or ECCN 9C610.

b. ''Software'' ''specially designed'' for the ''development'' or ''production'' of any of the following:

b.1. Static structural members;

b.2. Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;

b.3. Control surfaces, leading edges, trailing edges, and leading edge flap seals;

b.4. Leading edge flap actuation system commodities (i.e., power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) ''specially designed'' for fighter, attack, or bomber aircraft controlled in USML Category VIII;

b.5. Engine inlets and ducting;

b.6. Fatigue life monitoring systems ''specially designed'' to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life ''specially designed'' for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.7. Landing gear, and ''parts'' and ''components'' ''specially designed'' therefor, ''specially designed'' for use in aircraft weighing more than 21,000 pounds controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.8. Conformal fuel tanks and ''parts'' and ''components'' ''specially designed'' therefor;

b.9. Electrical ''equipment,'' ''parts,'' and ''components'' ''specially designed'' for electro-magnetic interference (EMI)—i.e., conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility—protection of aircraft that conform to the requirements of MIL–STD–461;

b.10. HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (i.e., a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components ''specially designed'' therefor;

b.11. Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

b.12. Equipment ''specially designed'' for system prognostic and health management of aircraft;

b.13. Active Vibration Control Systems; or

b.14. Self-sealing fuel bladders ''specially designed'' to pass a .50 caliber or larger gunfire test (MIL–DTL–5578, MIL–DTL–27422).

c. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 9A610.y.

9D619 Software ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, or materials controlled by 9C619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry except 9D619.y.	NS Column 1
RS applies to entire entry except 9D619.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9D619.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D619.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in ECCN 9D619.

List of Items Controlled

Unit: $ value
Related Controls: Software directly related to articles enumerated in USML Category XIX is subject to the control of USML paragraph XIX(g).
Related Definitions: N/A

Items:

a. ''Software'' (other than software controlled in paragraph .b of this entry) ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), or ECCN 9C619.

b. ''Software'' ''specially designed'' for the ''development'' or ''production'' of any of the following:

b.1. Front, turbine center, and exhaust frames;

b.2. Low pressure compressor (i.e., fan) ''components'' and ''parts'' as follows: Nose cones, casings, blades, vanes, spools, shrouds, blisks, shafts and disks;

b.3. High pressure compressor ''components'' and ''parts'' as follows: Casings, blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;

b.4. Combustor ''components'' and ''parts'' as follows: Casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, igniters, diffusers, liners, chambers, cowlings, domes and shells;

b.5. High pressure turbine ''components'' and ''parts'' as follows: Casings, shafts, disks, blades, vanes, nozzles, and tip shrouds;

b.6. Low pressure turbine ''components'' and ''parts'' as follows: Casings, shafts, disks, blades, vanes, nozzles, and tip shrouds;

b.7. Augmentor ''components'' and ''parts'' as follows: Casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and syncronization rings, and flame detectors and sensors;

b.8. Mechanical ''components'' and ''parts'' as follows: Fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and ''knife-edge''), permanent magnetic alternator and generator, eddy current sensors;

b.9. Torquemeter assembly (i.e., housing, shaft, reference shaft, and sleeve);

b.10. Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this ECCN; or

b.11. Engine monitoring systems (i.e., prognostics, diagnostics, and health) ''specially designed'' for gas turbine engines and components controlled in this ECCN.

c. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 9A619.y or 9B619.y.

■ 77. In Supplement No. 1 to part 774, Category 9, add new Export Control Classification Numbers 9E610 and 9E619 between Export Control Classification Numbers 9E102 and 9E990 to read as follows:

9E610 Technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, materials controlled by 9C610, or software controlled by 9D610.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart*
NS applies to entire entry except 9E610.y.	NS Column 1
RS applies to entire entry except 9E610.y.	RS Column 1
MT applies to ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled for MT reasons in 9A610, 9B610, or 9D610 for MT reasons.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9E610.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E610.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 9E610.

List of Items Controlled

Unit: $ value

Related Controls: Technical data directly related to articles enumerated in USML Category VIII are subject to the control of USML paragraph VIII(i).

Related Definitions: N/A

Items:

a. ''Technology'' (other than technology controlled by paragraphs .b or .y of this entry) ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 9A610, 9B610, 9C610, or 9D610.

Note: *''Build-to-print technology'' ''required'' for the ''production'' of items described in paragraphs b.1 through b.15 of this entry is classified under 9E610.a.*

b. ''Technology'' (other than ''build-to-print technology'') ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Static structural members;

b.2. Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;

b.3. Control surfaces, leading edges, trailing edges, and leading edge flap seals;

b.4. Leading edge flap actuation system commodities (i.e., power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) ''specially designed'' for fighter, attack, or bomber aircraft controlled in USML Category VIII;

b.5. Engine inlets and ducting;

b.6. Fatigue life monitoring systems ''specially designed'' to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life ''specially designed'' for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.7. Landing gear, and ''parts'' and ''components'' ''specially designed'' therefor, ''specially designed'' for use in aircraft weighing more than 21,000 pounds controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

b.8. Conformal fuel tanks and ''parts'' and ''components'' ''specially designed'' therefor;

b.9. Electrical ''equipment,'' ''parts,'' and ''components'' ''specially designed'' for electro-magnetic interference (EMI)—i.e., conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility—protection of aircraft that conform to the requirements of MIL–STD–461;

b.10. HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (i.e., a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components ''specially designed'' therefor;

b.11. Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

b.12. Equipment ''specially designed'' for system prognostic and health management of aircraft;

b.13. Active Vibration Control Systems; or

b.14. Self-sealing fuel bladders ''specially designed'' to pass a .50 caliber or larger gunfire test (MIL–DTL–5578, MIL–DTL–27422).

c. through x. [Reserved]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A610.y or 9D610.y.

9E619 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry except 9E619.y.	NS Column 1
RS applies to entire entry except 9E619.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9E619.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A

TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E619.b. or .c. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in ECCN 9E619.

List of Items Controlled

Unit: $ value

Related Controls: (1) Technical data directly related to articles enumerated in USML Category XIX are subject to the control of USML Category XIX(g). (2) Technology described in ECCN 9E003 is controlled by that ECCN.

Related Definitions: N/A

Items:

a. ''Technology'' (other than ''technology'' controlled by paragraphs .b and .c of this entry) ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), ECCN 9C619, or ECCN 9D619 (except 9D619.y).

Note: *''Build-to-print technology'' ''required'' for the ''production'' of items described in paragraphs b.1 through b.9 of this entry is classified under 9E619.a.*

b. ''Technology'' (other than ''build-to-print technology'') ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Front, turbine center, and exhaust frames;

b.2. Low pressure compressor (i.e., fan) ''components'' and ''parts'' as follows: nose cones and casings;

b.3. High pressure compressor ''components'' and ''parts'' as follows: casings;

b.4. Combustor ''components'' and ''parts'' as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, and igniters;

b.5. High pressure turbine ''components'' and ''parts'' as follows: casings;

b.6. Low pressure turbine ''components'' and ''parts'' as follows: casings;

b.7. Augmentor ''components'' and ''parts'' as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and syncronization rings, and flame detectors and sensors;

b.8. Mechanical ''components'' and ''parts'' as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and ''knife-edge''), permanent magnetic alternator and generator, eddy current sensors; or

b.9. Torquemeter assembly (i.e., housing, shaft, reference shaft, and sleeve).

c. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

c.1. Low pressure compressor (i.e., fan) ''components'' and ''parts'' as follows: blades, vanes, spools, shrouds, blisks, shafts and disks;

c.2. High pressure compressor ''components'' and ''parts'' as follows: blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;

c.3. Combustor ''components'' and ''parts'' as follows: diffusers, liners, chambers, cowlings, domes and shells;

c.4. High pressure turbine ''components'' and ''parts'' as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;

c.5. Low pressure turbine ''components'' and ''parts'' as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;

c.6. Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this ECCN; or

c.7. Engine monitoring systems (i.e., prognostics, diagnostics, and health) ''specially designed'' for gas turbine engines and components controlled in this ECCN.

d. through x. [Reserved]

y. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 9A619.y or 9B619.y, or ''software'' controlled by ECCN 9D619.y.

■ 78. Add Supplement No. 4 to Part 774, to read as follows:

Supplement No. 4 to Part 774—Commerce Control List Order of Review

(a) As described in EAR § 734.3, the EAR govern only items ''subject to the EAR,'' e.g., items not subject to the exclusive jurisdiction of another agency. Thus, for example, if an item is described in the U.S. Munitions List (USML) (22 CFR Part 121) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), including one of its catch-all paragraphs, then the item is a ''defense article'' subject to the ITAR and there is no need to review the CCL with respect to whether it describes the item. See 22 CFR § 120.6 (''Defense article means any item or technical data designated in § 121.1 of the ITAR. The policy described in § 120.3 is applicable to designations of additional items''). If an item is not described on the USML and is otherwise ''subject to the EAR,'' then work through each of the following steps to determine where the item is covered by the CCL or, if it is not covered by the CCL, and is therefore designated as EAR99.

(1) Step 1. To classify an item ''subject to the EAR'' against the CCL, review the general characteristics of the item. This will usually guide you to the appropriate category (0 through 9) on the CCL.

(2) Step 2. Once the potentially applicable CCL categories are identified, determine which product group within the CCL category or categories—i.e., A, B, C, D, or E—is applicable to the item.

(3) Step 3. The ''600 series'' describes military items that were once subject to the ITAR. Just as the ITAR effectively trumps the EAR, items described in a ''600 series'' ECCN trump other ECCNs on the CCL. Thus, the next step in conducting a classification analysis of an item ''subject to the EAR'' is to determine whether it is described in a ''600 series'' ECCN paragraph other than a ''catch-all'' paragraph such as a ''.x'' paragraph that controls unspecified ''parts'' and ''components'' ''specially designed'' for items in that ECCN or the corresponding USML paragraph. If so, the item is classified under that ''600 series'' ECCN paragraph.

(4) Step 4. If the item is not described in a ''600 series'' ECCN, then determine whether the item is classified under a ''600 series'' catch-all paragraph, i.e., one that controls non-specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for items in that ECCN or the corresponding USML paragraph. Such items are generally in the ''.x'' paragraph of the ''600 series'' ECCNs.

(i) Step 4.a. Determine whether the item would meet the criteria of either paragraphs (a)(1) or (a)(2) of the ''specially designed'' definition in § 772.1 of the EAR. (These are informally known as the ''catch'' paragraphs.) If not applicable, then the item is not within the scope of the ECCN paragraph that contains a ''specially designed'' control parameter. Skip to Step 5.

(ii) Step 4.b. If the item meets the criteria of either paragraph (a)(1) or (a)(2) of the ''specially designed'' definition, then determine whether any of the provisions of paragraph (b) of the ''specially designed'' definition would apply. (These are informally known as the ''release'' provisions.) If so, then the item is not within the scope of the ECCN paragraph that contains a ''specially designed'' control parameter.

Note to paragraph (a)(4): The emphasis on the word ''control'' in Steps 4.a and 4.b is deliberate. Some ECCNs use ''specially designed'' as a de-control parameter. If an item would *not* be classified under a

particular ECCN because it falls within the scope of either subparagraph (a)(1) or (a)(2) of the ''specially designed'' definition, then there is no need to analyze whether any element of paragraph (b) of the definition would apply to the item. One needs only review the ''release'' provisions in paragraph (b) of the ''specially designed'' definition if paragraph (a) of the ''specially designed'' definition applies to the item in a ''control'' paragraph of an ECCN that uses the term ''specially designed.''

(5) Step 5. If an item is not classified by a ''600 series'' ECCN, then starting from the beginning of the product group analyze each ECCN to determine whether any other ECCN in that product group describes the item. If any ECCN uses the term ''specially designed,'' see Steps 4a and 4b above in paragraphs (a)(4)(i) and (a)(4)(ii) respectively. If the item is described in one of these ECCNs, then the item is classified under that ECCN.

(6) Step 6. If the item is not described under any ECCN of any category of the CCL, then the item is designated as EAR99. EAR99 items may require a license if destined for a prohibited or restricted end user, end use or destination. See paragraphs (g) through (n) of § 732.3 ''Steps Regarding the Ten General Prohibitions,'' or General Prohibitions Four through Ten of part 736 of the EAR for license requirements other than those imposed by the CCL.

(b) [Reserved].

■ 79. Part 774 is amended by adding Supplement Nos. 6 and 7 to read as follows:

Supplement No. 6 to Part 774—Sensitive List

Note to Supplement No. 6: *While the items on this list are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement's Sensitive List. If text accompanies an ECCN below, then the Sensitive List is limited to a subset of items classified under the specific ECCN or has differing parameters.*

(1) Category 1

(i) 1A002.

(ii) 1C001.

(iii) 1C007.c and .d.

(iv) 1C010.c and .d.

(v) 1C012.

(vi) 1D002—''Software'' for the ''development'' of organic ''matrix'', metal ''matrix'', or carbon ''matrix'' laminates or composites controlled under 1A002, 1C007.c, 1C007.d, 1C010.c or 1C010.d.

(vii) 1E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment and materials controlled under 1A002, 1C001, 1C007.c, 1C007.d, 1C010.c, 1C010.d, or 1C012.

(viii) 1E002.e and .f.

(2) Category 2

(i) 2D001—''Software'', other than that controlled by 2D002, specially designed for the ''development'' or ''production'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with ''all compensations available'', equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

(ii) 2E001—''Technology'' according to the General Technology Note for the ''development'' of ''software'' specified by 2D001 described in this Supplement or for the ''development'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with ''all compensations available'' equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with ''all compensations available'', equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

(iii) 2E002—''Technology'' according to the General Technology Note for the ''production'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

(3) A positioning accuracy for jig boring machines, with ''all compensations available'', equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

(3) Category 3

(i) 3A002.g.1.

(ii) 3D001—''Software'' specially designed for the ''development'' or ''production'' of equipment controlled under 3A002.g.1.

(iii) 3E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment controlled under 3A002.g.1.

(4) Category 4

(i) 4A001.a.2.

(ii) 4D001—''Software'' specially designed for the ''development'' or ''production'' of equipment controlled under ECCN 4A001.a.2 or for the ''development'' or ''production'' of ''digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 0.5 Weighted TeraFLOPS (WT).

(iii) 4E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following equipment or ''software'': equipment controlled under ECCN 4A001.a.2, ''digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 0.5 Weighted TeraFLOPS (WT), or ''software'' controlled under the specific provisions of 4D001 described in this Supplement.

(5) Category 5—Part 1

(i) 5A001.b.3, .b.5, and .h.

(ii) 5B001.a—Equipment and specially designed components or accessories therefor, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iii) 5D001.a—''Software'' specially designed for the ''development'' or ''production'' of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iv) 5D001.b—''Software'' specially designed or modified to support ''technology'' controlled by this Supplement's description of 5E001.a.

(v) 5E001.a—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment, functions or features controlled under 5A001.b.3, b.5, or .h or ''software'' described in this Supplement's description of 5D001.a.

(6) Category 6

(i) 6A001.a.1.b—Systems or transmitting and receiving arrays, designed for object detection or location, having any of the following:

(A) A transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive;

(B) Sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

(C) Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

(D) Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

(E) Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

(F) Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

(1) Dynamic compensation for pressure; or

(2) Incorporating other than lead zirconate titanate as the transduction element;

(ii) 6A001.a.1.e.

(iii) 6A001.a.2.a.1, a.2.a.2, a.2.a.3, a.2.a.5, and a.2.a.6.

(iv) 6A001.a.2.b.

(v) 6A001.a.2.c—Processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vi) 6A001.a.2.d.

(vii) 6A001.a.2.e.

(viii) 6A001.a.2.f—Processing equipment, specially designed for real time application with bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(ix) 6A002.a.1.a, a.1.b, and a.1.c.

(x) 6A002.a.1.d.

(xi) 6A002.a.2.a—Image intensifier tubes having all of the following:

(A) A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

(B) Electron image amplification using any of the following:

(1) A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 μm or less; or

(2) An electron sensing device with a non-binned pixel pitch of 500 μm or less, specially designed or modified to achieve 'charge multiplication' other than by a microchannel plate; and

(C) Any of the following photocathodes:

(1) Multialkali photocathodes (e.g., S–20 and S–25) having a luminous sensitivity exceeding 700 μA/lm;

(2) GaAs or GaInAs photocathodes; *or*

(3) Other ''III–V compound'' semiconductor photocathodes having a maximum ''radiant sensitivity'' exceeding 10 mA/W.

(xii) 6A002.a.2.b.

(xiii) 6A002.a.3—Subject to the following additional notes:

Note 1: 6A002.a.3 does not apply to the following ''focal plane arrays'' in this Supplement:

a. Platinum Silicide (PtSi) ''focal plane arrays'' having less than 10,000 elements;

b. Iridium Silicide (IrSi) ''focal plane arrays.''

Note 2: 6A002.a.3 does not apply to the following ''focal plane arrays'' in this Supplement:

a. Indium Antimonide (InSb) or Lead Selenide (PbSe) ''focal plane arrays'' having less than 256 elements;

b. Indium Arsenide (InAs) ''focal plane arrays'';

c. Lead Sulphide (PbS) ''focal plane arrays'';

d. Indium Gallium Arsenide (InGaAs) ''focal plane arrays.''

Note 3: 6A002.a.3 does not apply to Mercury Cadmium Telluride (HgCdTe) ''focal plane arrays'' as follows in this Supplement:

a. 'Scanning Arrays' having any of the following:

1. 30 elements or less; or

2. Incorporating time delay-and-integration within the element and having 2 elements or less;

b. 'Staring Arrays' having less than 256 elements.

Technical Notes:

a. 'Scanning Arrays' are defined as ''focal plane arrays'' designed for use with a scanning optical system that images a scene in a sequential manner to produce an image;

b. 'Staring Arrays' are defined as ''focal plane arrays'' designed for use with a non-scanning optical system that images a scene.

Note 6: 6A002.a.3 does not apply to the following ''focal plane arrays'' in this List:

a. Gallium Arsenide (GaAs) or Gallium Aluminum Arsenide (GaAlAs) quantum well ''focal plane arrays'' having less than 256 elements;

b. Microbolometer ''focal plane arrays'' having less than 8,000 elements.

Note 7: 6A002.a.3.g does not apply to the linear (1-dimensional) ''focal plane arrays'' specially designed or modified to achieve 'charge multiplication' having 4,096 elements or less.

Note 8: 6A002.a.3.g. does not apply to the non-linear (2-dimensional) ''focal plane

arrays'' specially designed or modified to achieve 'charge multiplication' having a maximum linear dimension of 4,096 elements and a total of 250,000 elements or less.

(xiv) 6A002.b.

(xv) 6A002.c—'Direct view' imaging equipment incorporating any of the following:

(A) Image intensifier tubes having the characteristics listed in this Supplement's description of 6A002.a.2.a or 6A002.a.2.b;

(B) ''Focal plane arrays'' having the characteristics listed in this Supplement's description of 6A002.a.3; or

(C) Solid-state detectors having the characteristics listed in 6A002.a.1.

(xvi) 6A003.b.3—Imaging cameras incorporating image intensifier tubes having the characteristics listed in this Supplement's description of 6A002.a.2.a or 6A002.a.2.b

Note: 6A003.b.3 does not apply to imaging cameras specially designed or modified for underwater use.

(xvii) 6A003.b.4—Imaging cameras incorporating ''focal plane arrays'' having any of the following:

(A) Incorporating ''focal plane arrays'' specified by this Supplement's description of 6A002.a.3.a to 6A002.a.3.e;

(B) Incorporating ''focal plane arrays'' specified by this Supplement's description of 6A002.a.3.f; or

(C) Incorporating ''focal plane arrays'' specified by this Supplement's description of 6A002.a.3.g.

Note 1: 'Imaging cameras' described in 6A003.b.4 include ''focal plane arrays'' combined with sufficient ''signal processing'' electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.

Note 2: 6A003.b.4.a does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve 12 elements or fewer, not employing time-delay-and-integration within the element, and designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

Note 3: 6A003.b.4.b does not control imaging cameras having any of the following characteristics:

a. A maximum frame rate equal to or less than 9 Hz;

b. Having all of the following:

1. Having a minimum horizontal or vertical 'Instantaneous-Field-of-View (IFOV)' of at least 10 mrad/pixel (milliradians/pixel);

2. Incorporating a fixed focal-length lens that is not designed to be removed;

3. Not incorporating a 'direct view' display; and

Technical Note: 'Direct view' refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.

4. Having any of the following:

a. No facility to obtain a viewable image of the detected field-of-view; or

b. The camera is designed for a single kind of application and designed not to be user modified; or

Technical Note: 'Instantaneous Field of View (IFOV)' specified in Note 3.b is the lesser figure of the 'Horizontal FOV' or the 'Vertical FOV'.

'Horizontal IFOV' = horizontal Field of View (FOV)/number of horizontal detector elements

'Vertical IFOV'= vertical Field of View (FOV)/number of vertical detector elements.

c. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes three tons (gross vehicle weight) and having all of the following:

1. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended; or

b. A specially designed, authorized maintenance test facility; and

2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Note: When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.

Note 4: 6A003.b.4.c does not apply to 'imaging cameras' having any of the following characteristics:

a. Having all of the following:

1. Where the camera is specially designed for installation as an integrated component into indoor and wall-plug-operated systems or equipment, limited by design for a single kind of application, as follows:

a. Industrial process monitoring, quality control, or analysis of the properties of materials;

b. Laboratory equipment specially designed for scientific research;

c. Medical equipment;

d. Financial fraud detection equipment; and

2. Is only operable when installed in any of the following:

a. The system(s) or equipment for which it was intended; or

b. A specially designed, authorized maintenance facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the system(s) or equipment for which it was intended;

b. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes (gross vehicle weight), or passenger and vehicle ferries having a length overall (LOA) 65 m or greater, and having all of the following:

1. Is only operable when installed in any of the following:

a. The civilian passenger land vehicle or passenger and vehicle ferry for which it was intended; or

b. A specially designed, authorized maintenance test facility; and

2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;

c. Limited by design to have a maximum ''radiant sensitivity'' of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

1. Incorporating a response limiting mechanism designed not to be removed or modified; and

2. Incorporates an active mechanism that forces the camera not to function when the response limiting mechanism is removed; and

3. Not specially designed or modified for underwater use; or

d. Having all of the following:

1. Not incorporating a 'direct view' or electronic image display;

2. Has no facility to output a viewable image of the detected field of view;

3. The ''focal plane array'' is only operable when installed in the camera for which it was intended; and

4. The ''focal plane array'' incorporates an active mechanism that forces it to be permanently inoperable when removed from the camera for which it was intended.

Note: When necessary, details of the item will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 4 above.

Note 5: 6A003.b.4.c does not apply to imaging cameras specially designed or modified for underwater use.

(xviii) 6A003.b.5.

(xix) 6A004.c.

(xx) 6A004.d.

(xxi) 6A006.a.1.

(xxii) 6A006.a.2—''Magnetometers'' using optically pumped or nuclear precession (proton/Overhauser)

''technology'' having a 'sensitivity' lower (better) than 2 pT (rms) per square root Hz.

(xxiii) 6A006.c.1—''Magnetic gradiometers'' using multiple ''magnetometers'' specified by 6A006.a.1 or this Supplement's description of 6A006.a.2.

(xxiv) 6A006.d—''Compensation systems'' for the following:

(A) Magnetic sensors specified by 6A006.a.2 and using optically pumped or nuclear precession (proton/Overhauser) ''technology'' that will permit these sensors to realize a 'sensitivity' lower (better) than 2 pT rms per square root Hz.

(B) Underwater electric field sensors specified by 6A006.b.

(C) Magnetic gradiometers specified by 6A006.c. that will permit these sensors to realize a 'sensitivity' lower (better) than 3 pT/m rms per square root Hz.

(xxv) 6A006.e—Underwater electromagnetic receivers incorporating magnetometers specified by 6A006.a.1 or this Supplement's description of 6A006.a.2.

(xxvi) 6A008.d, .h, and .k.

(xxvii) 6B008.

(xxviii) 6D001—''Software'' specially designed for the ''development'' or ''production'' of equipment specified by 6A004.c, 6A004.d, 6A008.d, 6A008.h, 6A008.k, or 6B008.

(xxix) 6D003.a.

(xxx) 6E001.

(xxxi) 6E002—''Technology'' according to the General Technology Note for the ''production'' of equipment specified by the 6A or 6B provisions described in this Supplement.

(7) Category 7

(i) 7D002.
(ii) 7D003.a.
(iii) 7D003.b.
(iv) 7D003.c.
(v) 7E001.
(vi) 7E002.

(8) Category 8

(i) 8A001.b to .d.

(ii) 8A002.b—Systems specially designed or modified for the automated control of the motion of submersible vehicles specified by 8A001.b through .d using navigation data having closed loop servo-controls and having any of the following:

(A) Enabling a vehicle to move within 10 m of a predetermined point in the water column;

(B) Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; or

(C) Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed.

(iii) 8A002.h and .j.
(iv) 8A002.o.3.
(v) 8A002.p.

(vi) 8D001—''Software'' specially designed for the ''development'' or ''production'' of equipment in 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(vii) 8D002.

(viii) 8E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(ix) 8E002.a.

(9) Category 9

(i) 9A011.
(ii) 9B001.b.

(iii) 9D001—''Software'' specially designed or modified for the ''development'' of equipment or ''technology,'' specified by 9A011, 9B001.b. 9E003.a.1, 9E003.a.2 to a.5 or 9E003.a.8 or 9E003.h.

(iv) 9D002—''Software'' specially designed or modified for the ''production'' of equipment specified by 9A011 or 9B001.b.

(v) 9D004.a and .c.
(vi) 9E001.
(vii) 9E002.
(viii) 9E003.a.1.
(ix) 9E003.a.2 to a.5, a.8, .h.

Supplement No. 7 to Part 774—Very Sensitive List

Note to Supplement No. 7: *While the items on this list are identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions are drawn directly from the Wassenaar Arrangement's Very Sensitive List, which is a subset of the Wassenaar Arrangement's Sensitive List. If text accompanies an ECCN below, then the Very Sensitive List is limited to a subset of items classified under the specific ECCN or has differing parameters.*

(1) Category 1

(i) 1A002.a.
(ii) 1C001.
(iii) 1C012.

(iv) 1E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment and materials specified by 1A002.a, 1C001, or 1C012.

(2) Category 5—Part 1

(i) 5A001.b.5.
(ii) 5A001.h.

(iii) 5D001.a—''Software'' specially designed for the ''development'' or ''production'' of equipment, functions or features specified by 5A001.b.5 or 5A001.h.

(iv) 5E001.a—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment, functions, features or ''software'' specified by 5A001.b.5, 5A001.h, or 5D001.a.

(3) Category 6

(i) 6A001.a.1.b.1—Systems or transmitting and receiving arrays, designed for object detection or location, having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) and an operating frequency in the band from 30 Hz to 2 kHz.

(ii) 6A001.a.2.a.1 to a.2.a.3, a.2.a.5, or a.2.a.6.

(iii) 6A001.a.2.b.

(iv) 6A001.a.2.c—Processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(v) 6A001.a.2.e.

(vi) 6A001.a.2.f—Processing equipment, specially designed for real time application with bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vii) 6A002.a.1.c.

(viii) 6B008.

(ix) 6D001—''Software'' specially designed for the ''development'' or ''production'' of equipment specified by 6B008.

(x) 6D003.a.

(xi) 6E001—''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'' specified by the 6A, 6B, or 6D provisions described in this Supplement.

(xii) 6E002—''Technology'' according to the General Technology Note for the ''production'' of equipment specified by the 6A or 6B provisions described in this Supplement.

(4) Category 7

(i) 7D003.a.
(ii) 7D003.b.

(5) Category 8

(i) 8A001.b.
(ii) 8A001.d.
(iii) 8A002.o.3.b.

(iv) 8D001—''Software'' specially designed for the ''development'' or ''production'' of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(v) 8E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(6) Category 9

(i) 9A011.

(ii) 9D001—''Software'' specially designed or modified for the ''development'' of equipment or ''technology'' specified by 9A011, 9E003.a.1, or 9E003.a.3.a.

(iii) 9D002—''Software'' specially designed or modified for the ''production'' of equipment specified by 9A011.

(iv) 9E001—''Technology'' according to the General Technology note for the ''development'' of equipment or ''software'' specified by 9A011 or this Supplement's description of 9D001 or 9D002.

(v) 9E002—''Technology'' according to the General Technology Note for the ''production'' of equipment specified by 9A011.

(vi) 9E003.a.1.

(vii) 9E003.a.3.a.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2013–08352 Filed 4–15–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Parts 120, 121, and 123

RIN 1400–AD37

[Public Notice: 8269]

Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President's Export Control Reform (ECR) effort, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to revise four U.S Munitions List (USML) categories and provide new definitions and other changes. Additionally, policies and procedures regarding the licensing of items moving from the export jurisdiction of the Department of State to the Department of Commerce are provided. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011.

DATES: This rule is effective October 15, 2013.

ADDRESSES: The Department of State's full plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, First ECR Final Rule.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles'' and ''defense services,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports, reexports, and retransfers. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations. *See* 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

Export Control Reform Update

Pursuant to the President's Export Control Reform (ECR) initiative, the Department has published proposed revisions to twelve USML categories to create a more positive control list and eliminate where possible ''catch all'' controls. The Department, along with the Departments of Commerce and Defense, reviewed the public comments the Department received on the proposed rules and has, where appropriate, revised the rules. A discussion of the comments is included later on in this notice. The Department continues to review the remaining USML categories and will publish them as proposed rules in the coming months.

The Department intends to publish final rules implementing the revised USML categories and related ITAR amendments periodically, beginning with this rule.

Pursuant to ECR, the Department of Commerce, at the same time, has been publishing revisions to the EAR, including various revisions to the CCL. Revision of the USML and CCL are coordinated so there is uninterrupted regulatory coverage for items moving from the jurisdiction of the Department of State to that of the Department of Commerce. For the Department of Commerce's companion to this rule, please see, ''Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform,'' elsewhere in this edition of the **Federal Register.**

Changes in This Rule

The following changes are made to the ITAR with this final rule: (i) Revision of USML Categories VIII (Aircraft and Related Articles), XVII (Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated), and XXI (Articles, Technical Data, and Defense Services Not Otherwise Enumerated); (ii) addition of USML Category XIX (Gas Turbines Engines and Associated Equipment); (iii) establishment of definitions for the terms ''specially designed'' and ''subject to the EAR''; (iv) creation of a new licensing procedure for the export of items subject to the EAR that are to be exported with defense articles; and (v) related amendments to other ITAR sections.

Revision of USML Category VIII

This final rule revises USML Category VIII, covering aircraft and related articles, to establish a clearer line between the USML and the CCL regarding controls over these articles. The revised USML Category VIII narrows the types of aircraft and related articles controlled on the USML to only those that warrant control under the requirements of the AECA. Changes include moving similar articles controlled in multiple categories into a single category, including moving gas

turbine engines for articles controlled in this category to the newly established USML Category XIX, described elsewhere in this notice, and CCL Export Control Classification Numbers (ECCNs) in the 9Y619 format, in a rule published separately by the Department of Commerce (*see* elsewhere in this issue of the **Federal Register.**) In addition, articles common to the Missile Technology Control Regime (MTCR) Annex and articles in this category are identified with the parenthetical ''(MT)'' at the end of each section containing such articles.

The revised USML Category VIII does not contain controls on all generic parts, components, accessories, and attachments specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains, with one principal exception, a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. The exception pertains to parts, components, accessories, and attachments ''specially designed'' (*see* definition of this term in this rule) for the following U.S.-origin aircraft that have low observable features or characteristics: the B–1B, B–2, F–15SE, F/A–18 E/F/G, F–22, F–35, and future variants thereof; or the F–117 or U.S. Government technology demonstrators. All other parts, components, accessories, and attachments specially designed for a military aircraft and related articles are subject to the new ''600 series'' controls in Category 9 of the CCL.

This rule also revises ITAR § 121.3 to more clearly define ''aircraft'' for purposes of the revised USML Category VIII.

This revision of USML Category VIII was first published as a proposed rule (RIN 1400–AC96) on November 7, 2011, for public comment (*see* 76 FR 68694). The comment period ended December 22, 2011. Thirty-one parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received numerous proposals for alternative definitions for aircraft and alternative phrasing for other sections of USML Category VIII and ITAR § 121.3. The Department has reviewed these recommendations with the objective of realizing the intent of the President's ECR Initiative. In certain instances, the regulation was amended or otherwise edited for fidelity to ECR objectives and for clarity.

Two commenting parties stated that referencing the ITAR § 121.3 definition of ''aircraft'' in USML Category VIII(a) while not doing so for USML Category VIII(h) is inconsistent and potentially confusing to the exporter. The Department notes that paragraph (h) is to control parts, components, accessories, attachments, and associated equipment regardless of whether the aircraft is controlled on the USML or the CCL. Therefore, a reference to ITAR § 121.3 in paragraph (h) would be inappropriate.

Two commenting parties recommended removing references to specific aircraft in USML Category VIII(h), as referencing specific aircraft would control parts and components common to other unlisted aircraft. The Department believes proper application of the definition for specially designed will avoid this occurrence, and therefore did not accept this recommendation.

Three commenting parties recommended removing the sections providing USML coverage for parts, components, etc., manufactured or developed using classified information, with the rationale that use of this type of information in these stages of production should not automatically designate these articles as defense articles. Upon review, the Department revised this section, but for different reasons. The Department removed the section regarding the use of classified information during manufacture because this information would not be readily available to exporters and other parties. The Department, however, did not remove the section regarding development of such articles using classified information because such information would be available to developers. Additionally, prudence dictates that the development stage of production using classified information be USML controlled, without prejudice to the eventual jurisdictional designation of the article once it enters production.

To address the concerns of two commenting parties that including ''strategic airlift aircraft'' in the definition of ''aircraft'' in ITAR § 121.3 would control on the USML aircraft more appropriately controlled on the CCL, the Department has added the phrase ''with a roll-on/roll-off ramp'' to further focus the control on military critical capabilities.

One commenting party recommended enumerating ''tilt rotor aircraft'' in USML Category VIII(a) and providing corresponding descriptive and defining text in ITAR § 121.3. The Department notes that this type aircraft is effectively covered in USML Category VIII(a)(11), and therefore did not amend the regulation to enumerate tilt rotor aircraft.

One commenting party noted that not all items in Wassenaar Munitions List Category 10, which covers aircraft and related items, seem to be specifically enumerated in the new regulations. The Department has reviewed this matter and concludes that all of Wassenaar Munitions List Category 10 is captured on the USML and the CCL. The Department notes, however, that there will not be a one-for-one accounting of all entries between the Wassenaar Munitions List and the USML and CCL, as the lists are constructed differently.

One commenting party recommended the term ''armed,'' as found in ITAR § 121.3(a)(3), be defined, to avoid ambiguity and regulatory overreach. Examples provided of articles potentially captured, but which the Department surely would not have intended to be captured, are aircraft ''armed'' with water cannons or paintball guns. While the term ''armed'' is gainfully employed in many contexts, it is the Department's opinion that in the context of defense trade, ''armed'' can be understood in its plain English meaning. One dictionary consulted by the Department defined ''armed'' as ''furnished with weapons.'' Another dictionary provides ''having weapons'' as the primary meaning. Yet another defined it as ''equipped with weapons.'' The Department notes the consensus on the meaning of ''armed,'' and has no quibble or concern with it.

One commenting party recommended the word ''equipped'' be removed from USML Category VIII(a)(11), and the terms ''incorporated'' and ''integrated'' be used in its place, on the grounds that ''equipped'' is ''overly expansive'' and inconsistent with terminology used elsewhere in the rule. The Department accepts this comment and has replaced ''equipped'' with ''incorporates,'' the term used in ITAR § 121.3(a)(6).

One commenting party recommended that Optionally Piloted Vehicles (OPV) without avionics and software installed that would allow the aircraft to be flown unmanned should be considered manned for purposes of the USML. The Department has clarified the control for OPVs at USML Category VIII(a)(13) and ITAR § 121.3(a)(7).

One commenting party voiced concern over the potential ''chilling effect'' of controlling on the USML the products of Department of Defense-funded fundamental research. USML Category VIII(f) provides for the control of developmental aircraft and specially designed parts, components, accessories, and attachments therefor

developed under a contract with the Department of Defense. For the final rule, the Department has added a note to USML Category VIII(f) providing for developmental aircraft to be ''subject to the EAR'' (*see* definition of this term in this rule) if a commodity jurisdiction request leads to such a determination or if the relevant Department of Defense contract stipulates the aircraft is being developed for both civil and military applications. The Department draws a distinction between developmental aircraft developed under a contract funded by the Department of Defense and the conduct of fundamental research. ''Fundamental research'' is defined at ITAR § 120.11(a)(8). Pursuant to that section, research is not ''fundamental research'' if the results are restricted for proprietary reasons or specific U.S. Government access and dissemination controls, the researchers accept other restrictions on publication of information resulting from the activity, or the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable. Fundamental research—*i.e.,* research without the aforementioned restrictions—is in the public domain, even if funded by the U.S. Government. A few other commenting parties voiced concerns with the scope of this control; the Department intends the answer provided here to address those concerns.

The Department did not accept the recommendation of three commenting parties to retain the note to USML Category VIII(h) (the ''17(c)'' note), which discussed jurisdiction of certain aircraft parts and components, because application of the specially designed definition will serve that purpose for the exporter.

One commenting party recommended that wing folding systems not be controlled on the USML, as such a system has been developed (but not sold) for commercial use and therefore is not inherently a military item. Similarly, one commenting party recommended the removal of short take-off, vertical landing (STOVL) technology from the USML, as it has commercial benefits. The Department notes these systems and technology have military application, but no demonstrated commercial application. Therefore, the Department did not accept these recommendations.

In response to several comments regarding the scope of the control in USML Category VIII(h)(16), covering computer systems, the Department has revised it to specifically capture such systems that perform a purely military function (*e.g.,* fire control computers) or are specially designed for aircraft controlled in USML Category VIII or ECCN 9A610.

Three commenting parties recommended the defining criteria of ''aircraft'' in ITAR § 121.3 be included in USML Category VIII. The Department notes Category VIII and ITAR § 121.3 serve different purposes, with the former providing the control parameters and the latter providing the definition of the main articles controlled in Category VIII. Therefore, the Department did not accept this recommendation.

One commenting party, noting the developing market for civil application of unmanned aerial vehicles (UAVs), recommended additional specifications for their control in USML Category VIII. A second commenting party recommended criteria be provided to establish a ''bright line'' between UAVs controlled on the USML and those controlled on the CCL. Two other commenting parties recommended control on the CCL of UAVs specially designed for a military application but which do not have a specially designed capability controlled on the USML. While a few commenting parties did respond to the Department's request for input on the provision of criteria for the establishment of export jurisdiction that would not result in the removal from the USML of UAVs that should be covered by it, none of them was acceptable. In addition, it is the Department's assessment that the technical capabilities of UAVs specially designed for a military application are such as to render ineffective any means of differentiating between critical and any non-critical military systems. Therefore, the Department is publishing the UAV controls as first proposed. The CCL's ECCN 9A012 specifies those UAVs for export under the Department of Commerce's jurisdiction; in conjunction with USML Categories VIII(a)(5) and (a)(6), the Department believes the controls for UAVs meet the needs of U.S. foreign policy and national security.

The Department accepted the recommendation of three commenting parties to revise USML Category VIII(h)(6) to exclude coverage of external stores support systems that do not have a military application by adding the words ''for ordnance or weapons.''

The Department accepted the recommendation of ten commenting parties regarding the broad control of lithium-ion batteries in USML Category VIII(h)(13) and has limited coverage to such batteries that provide greater than 28 VDC nominal.

The Department accepted the recommendation of one commenting party to provide a definition for the term ''equipment.'' A proposed definition has been published by the Department (*see* ''Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XI and Definition for 'Equipment,' '' 77 FR 70958).

The Department does not believe the issuance of a patent for thrust vectoring on commercial aircraft is sufficient justification to change the regulation regarding non-surface-based flight control systems and effectors. Therefore, the Department did not accept this recommendation.

Several commenting parties noted changes to USML Category VIII entailing the addition of articles previously covered in other USML categories. Generally, the main intent of these changes is to group articles in a sensible manner. So, for example, the Department believes it is sensible to control as aircraft components computer systems specially designed for aircraft.

One commenting party requested clarification of the jurisdictional scope of the term ''jet powered'' as used in USML Category VIII(a)(3). The Department has replaced that term with ''turbofan- or turbojet-powered'' to more precisely describe the intent of the control.

One commenting party recommended retention of the following sentence in USML Category VIII(d): ''Fixed land-based arresting gear is not included in this paragraph.'' As this is the intent of the regulation, and including the sentence would provide clarity to the control, the Department accepted this recommendation.

One commenting party recommended extending the definition of ''classified'' in USML Category VIII(h) to include designations made by ''other collective defense organization[s].'' The Department has revised the definition to include such designations made by ''international organizations.''

One commenting party recommended the Department allow for public comment on a revised USML Category VIII again once a final definition of specially designed is published because analysis of and concerns with USML Category VIII were premised on the definition of specially designed as provided in the proposed rule. Three other commenting parties expressed similar concerns. The Department disagrees with this argument. The extent to which articles are controlled on the USML pursuant to application of the

specially designed definition is reflective of the definition itself, and not the controls as provided in USML Category VIII, or any of the other USML categories. Therefore, the Department did not accept this recommendation.

Because of staggered implementation of revised USML categories and the inter-category movement of some articles, the Department has found it necessary to establish temporary USML entries to avoid lack of appropriate controls during the transition. For example, although reserved in the proposed rule, USML Category VIII(e) has been removed from reserved status in the final rule. The articles controlled therein are to be covered in revised USML Category XII. Similarly, USML Categories VIII(h)(21) through (h)(26) have been added.

As described in greater detail in the section of this notice addressing the transition plan, a new ''(x) paragraph'' has been added to USML Category VIII, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities, software, and technical data are to be used in or with defense articles controlled in USML Category VIII *and* are described in the purchase documentation submitted with the application. This same construct will be incorporated in other USML categories (to include new USML Category XIX in this rule).

In response to public comments on the transition plan, the Department has added a note to USML Category VIII to address USML controlled systems, parts, components, accessories, and attachments incorporated into 600 series items.

Establishment of USML Category XIX for Gas Turbine Engines and Associated Equipment

This rule establishes USML Category XIX to cover gas turbine engines and associated equipment formerly covered in USML Categories IV, VI, VII, and VIII. The intent of this change is to make clear that gas turbine engines for cruise missiles, surface vessels, vehicles, and aircraft meeting certain objective parameters are controlled on the USML. Articles common to the Missile Technology Control Regime (MTCR) Annex and articles in this category are identified with the parenthetical ''(MT)'' at the end of each section containing such articles.

Because of the staggered implementation of revised USML categories, it would seem that USML Category XIX controls gas turbine engines still covered in USML Categories IV, VI, and VII. However, the new Category XIX does in fact supersede the controls under USML Categories IV, VI, and VII.

The establishment of USML Category XIX (RIN 1400–AC98) was first published as a proposed rule on December 6, 2011, for public comment (*see* 76 FR 76097). The comment period ended January 20, 2012. Ten parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

Several commenting parties recommended including the term ''military'' in the category heading to avoid controlling on the ITAR engines developed for civil application. The controls are intended to capture articles on the basis of their capabilities, and not their intended end-use *per se.* Therefore, the Department did not accept this recommendation. The Department has, however, in response to recommendations in public comments, revised the category, in particular paragraphs (a) and (b), to better focus the control on those engines of military significance.

Two commenting parties stated the creation of a separate category for engines, rather than controlling them under the categories that cover systems in which they are placed, adds unnecessary complexity to the regulations and would be costly for industry to implement in its licensing and compliance programs. The Department understands that revision of the categories controlling gas turbine engines, as well as the larger ECR effort to revise the USML and the CCL, would require industry to update its licensing and compliance programs, but believes the eventual benefits to national security of the new ITAR and EAR controls will justify any burdens imposed on industry to transition to the new structure.

Three commenting parties recommended removal of the phrase, ''whether in development, production, or inventory,'' from USML Categories XIX(a), (b), and (c), as it may have the unintended effect of not controlling certain engines (*e.g.,* those engines temporarily removed from active service). The Department accepted this recommendation, and has removed the phrase from the final rule.

One commenting party noted potential confusion between USML Categories IV and XIX regarding engine controls, and the need to update ITAR § 121.16 to account for changes in those controls. In line with a major goal of ECR, the Department is revising the categories to make clearer which articles they control. USML Category IV will, to use examples provided by the commenting party, control ramjets and scramjets. In addition, the Department will discontinue identifying those articles common to the USML and the Missile Technology Control Regime Annex in ITAR § 121.16, and instead identify those articles with the parenthetical ''(MT)'' at the end of each USML category section containing such articles.

One commenting party requested clarification of the controls for printed circuit boards designed for USML articles, and their related designs or digital data. Printed circuit boards ''specially designed'' (*see* definition of this term in this rule) for articles in USML Category XIX, as well as for articles in all other USML categories, are controlled in USML Category XI and their related designs or digital data are controlled as technical data, per ITAR § 120.10. However, the Department does not consider printed circuit boards themselves to be technical data. The Department notes that printed circuit boards are to be enumerated in the revised USML Category XI. In the meantime, as noted elsewhere in this notice, USML Category VIII and Category XIX contain a temporary enumeration of printed circuit boards.

Noting that the phrase ''or capable of'' introduces into the regulation a criterion not descriptive of the actual article, four commenting parties recommended its removal. The Department has accepted this recommendation, and has revised those sections accordingly, replacing ''capable of'' with ''specially designed.''

Five commenting parties disagreed with a number of the parameters used in USML Categories XIX(a) and (b) to distinguish military from commercial capabilities, saying commercial articles routinely or increasingly have those performance criteria. The Department has reviewed the criteria and has revised some to better describe articles requiring control on the USML. Changes include increasing the altitude threshold for the high altitude extraction parameter from 40,000 feet to 50,000 feet and removing cooled pressure turbines from the control. In addition, proposed paragraph (a)(6), for thrust reversers, has been revised and moved to USML Category VIII as paragraph (h)(19).

Three commenting parties recommended revising USML Category XIX(d) to describe the technologies of concern and not list specific engine families in the regulation because, over time, the listing would capture obsolete engines or not include engines that

merit control as defense articles. The Department deems it appropriate to enumerate these engines, as they are used specifically in USML-controlled platforms or share critical technologies with such engines. The Department will amend the regulations as necessary to keep the category updated, and therefore did not accept this recommendation.

One commenting party recommended the inclusion of a definition for digital engine controls, the subject of USML Category XIX(e). The Department has included a note to paragraph (e) describing ''digital electronic control systems for gas turbine engines.''

Six commenting parties noted that proposed USML Category XIX(f)(2) would expand the description of ''hot section'' components, and thereby expand controls on these articles. The Department has revised paragraph (f)(2) for the final rule, and added new paragraph (f)(3) and (f)(4) without Significant Military Equipment designations, to address this matter.

Four commenting parties recommended removal of engine monitoring systems from USML Category XIX(f) because such systems used for commercial engines would also be covered. The Department believes appropriate application of the specially designed definition would preclude this occurrence, and therefore did not accept this recommendation. The Department believes there are engine monitoring systems specially designed for USML Category XIX engines and therefore did not accept one commenting party's recommendation to control all such systems on the CCL. And, regarding the comment by one party that undefined terms in that section would lead to overregulation, the Department believes appropriate application of the specially designed definition will preclude this occurrence.

Pursuant to a recommendation from one commenting party, the Department corrected its omission of an asterisk denoting the designation of Significant Military Equipment for classified articles controlled in USML Category XIX(f)(6).

Two commenting parties recommended revising USML Category XIX(g) to control only technical data and defense services directly related to the ''military functionality'' of a defense article, for otherwise data and services common to commercial engines would be captured. The Department believes the ITAR definitions for ''technical data'' and ''defense service'' would preclude this occurrence, and therefore did not accept these recommendations.

Definition for ''Specially Designed''

Although one of the goals of the ECR initiative is to describe USML controls without using design intent criteria, certain sections in the revised categories nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term.

The specially designed definition provided in this notice has a two-paragraph structure. Paragraph (a) identifies which commodities and software are specially designed'' and paragraph (b) identifies which parts, components, accessories, attachments, and software are excluded from specially designed.

Paragraph (a) begins with the phrase, ''Except for commodities described in (b), a commodity is 'specially designed' if it [is within the scope of any one of two subparagraphs discussed below].'' It is the beginning of the ''catch'' in the ''catch and release'' structure of the definition. For USML sections containing the term ''specially designed,'' a defense article is ''caught''—it is ''specially designed''—if any of the two elements of paragraph (a) applies and none of the elements of paragraph (b) applies.

Paragraph (a)(1) is limited by the phrase, ''if, as a result of development.'' The definition also includes a note to paragraph (b)(3) that contains the following definition of ''development'' for purposes of the specially designed definition: '' 'Development' is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.'' Therefore, a defense article is caught by the threshold requirement of paragraph (a) only if someone is engaged in any of these ''development'' activities with respect to the article at issue. Thus one may ask the following to determine if a defense article is within the scope of paragraph (a)(1): Does the commodity or software, as a result of development, have properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant USML paragraph? If the answer is ''no,'' then the commodity or software is not specially designed and further analysis pursuant to paragraph (b) is not necessary. If the answer is ''yes,'' then the exporter or reexporter must determine whether any one of the five exclusions in paragraph (b) of the definition applies. If any one of the five paragraph (b) exclusions applies, then the commodity or software is not specially designed. If none does, then the commodity or software is specially designed.

Paragraph (a)(1) captures a commodity or software if it, as a result of ''development,'' ''has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph.'' So, even if a commodity or software is capable of use with a defense article, it is not captured by paragraph (a)(1) unless someone did something during the commodity's development for it to achieve or exceed the performance levels, characteristics, or functions described in a referenced USML paragraph.

Paragraph (a)(2) has been revised to incorporate the proposed paragraph (a)(3) as follows: ''(2) is a part (*see* § 121.8(d) of this subchapter), component (*see* § 121.8(b) of this subchapter), accessory (*see* § 121.8(c) of this subchapter), attachment (*see* § 121.8(c) of this subchapter), or software for use in or with a defense article.'' The Department realizes this element is similar to paragraph (a)(1), but believes it needs to be listed separately because not all descriptions of parts and components on the USML include performance levels, characteristics, or functions as a basis for control. Thus one may ask the following to determine if a defense article is within the scope of paragraph (a)(2): Is the part, component, accessory, attachment, or software for use in or with a defense article? If the answer is ''no,'' then the commodity or software is not specially designed and further analysis pursuant to paragraph (b) is not necessary. If the answer is ''yes,'' then the exporter or reexporter must determine whether any one of the five exclusions in paragraph (b) of the definition applies. If any one does apply, then the commodity or software is not specially designed. If none does, then the commodity or software is specially designed.

Paragraph (a)(2) is broad enough to capture all the defense articles that would be potentially specially designed, but in practice would capture a larger set of parts, components, accessories, attachments, and software than is intended. Paragraph (b) works to release from inclusion under specially designed specific and non-specific parts, components, accessories, attachments, and software consistent with existing U.S. export control and international commitments. Specifically, any part, component, accessory, attachment, or

software described in an exclusion paragraph under (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5), would *not* be controlled by a USML ''catch-all'' paragraph. In this way, paragraphs (a) and (b) are inextricably linked and are intended to work together to identify the parts, components, accessories, attachments, and software that need to be treated as specially designed for purposes of the ''catch-all'' provisions on the USML.

Paragraph (b) codifies the principle in ITAR § 120.3 that, in general, a commodity should not be ITAR controlled if it has a predominant civil application or has performance equivalent (defined by form, fit, and function) to a commodity used for civil applications. If such a commodity warrants control under the ITAR because it provides the United States with a critical military or intelligence advantage or for another reason, then it is or should be enumerated on the USML.

Paragraph (a) creates more objective tests for what defense articles are specially designed based on the criteria identified in (a)(1) or (a)(2). Paragraph (b) creates more objective tests for which parts, components, accessories, attachments, and software are excluded from specially designed under the exclusion criteria identified in (b)(1), (b)(2), (b)(3), (b)(4) or (b)(5). The objective criteria identified in paragraph (a), working with the objective exclusion criteria identified in paragraph (b), allow this specially designed definition to achieve the nine objectives for the definition (*see* ''Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML),'' 76 FR 41958).

The definition for specially designed was first published as a proposed rule (RIN 1400–AD22) on June 19, 2012, for public comment (*see* 77 FR 36428). The comment period ended August 3, 2012. Twenty-eight parties filed comments during the established comment period recommending changes. The Department's evaluation of the written comments and recommendations follows.

Many of the commenting parties submitted recommendations and proposals for the specific wording of the specially designed definition, and provided analysis of the text of the definition provided by the Department. The Department carefully reviewed these submissions with the objective of clarifying and improving the definition. In many instances, it has accepted these recommendations, as is reflected in the definition in this rule. Selections of these comments are discussed in the following paragraphs.

One commenting party expressed concern with the concurrent existence of the terms ''specifically designed'' with ''specially designed'' in the USML, given that the revision of the USML will occur in stages. The Department notes that where the concept is to be retained, the term ''specifically designed'' will be replaced with ''specially designed'' throughout the USML and ITAR, and the Department understands that in the process of revising the USML, application of both concepts will not be ideal.

Six commenting parties expressed concern about the relation of specially designed with the current text in ITAR § 120.3. The commenting parties recommended revising ITAR § 120.3 to be consistent with the definition of specially designed and the revision of the USML into a positive list. The Department accepted this recommendation and provides a revised ITAR § 120.3 as part of this final rule.

Two commenting parties recommended the text and definitions regarding ''development'' be correlated to the Defense Department's acquisition milestones in terms of technology development phases. The commenting parties noted this will improve the clarity for defense contractors already familiar with Defense Department terminology. The Department did not accept this recommendation as ''development'' is already defined in the multilateral regimes and the EAR.

One commenting party requested confirmation of the intention to remove any perceived obligation on the part of a manufacturer to monitor post-release sales, and to confirm that a first sale to or predominant use by military end-users will not confer specially designed status on an article. The Department confirms this intention and has revised ITAR § 120.3 accordingly. In addition, the Department believes that appropriate application of the specially designed definition will not capture those articles that do not warrant USML control.

One commenting party recommended ITAR § 120.41(a) should specify what type of commodity (*i.e.,* part, component, or end-item) should be considered specially designed if it is ''in development.'' The Department accepted this recommendation and revised ITAR § 120.41(a) accordingly.

One commenting party recommended reconsideration of limiting the term ''development'' (and thus ''specially designed'') to the phase prior to serial production, noting a manufacturer could theoretically design a lesser capability item and then institute a post-production design change to avoid an article being defined as specially designed. This recommendation was accepted in part. The revised Note 3 to ITAR § 120.41(b)(3) addresses this concern.

Two commenting parties requested clarification of the Department's policy objective for software and the applicability of specially designed to it. The Department confirms the control of software is directly related to its applicability to defense articles on the USML, and the Department has added the term to the definition. In addition, the Department confirms that only materials specifically enumerated on the USML are controlled by the ITAR.

One commenting party recommended the definition of ''commodity'' should include software as well as hardware, to parallel the Department of Commerce's definition. The Department did not accept this recommendation. Software is distinct from the definition of commodity in the EAR and is controlled separately.

One commenting party recommended the adoption of specially designed should be made concurrently with the transition policy to avoid jurisdictional ambiguity. The Department accepted this recommendation. The transition guidance is provided in this final rule.

One commenting party recommended a final extended comment period for specially designed should be permitted following publication of all ''critical elements'' of ECR. The Department did not accept this recommendation. The regulations, to include the definition of specially designed, can be amended if necessary.

Four commenting parties requested confirmation that application of specially designed will not reverse existing commodity jurisdiction (CJ) determinations and recommended revision of the definition to so stipulate. The Department accepted this recommendation and has revised ITAR § 120.41(b)(1) accordingly.

One commenting party recommended adding the words ''tooling and test and support equipment'' to both Note 2 and the lead-in sentence to paragraph (b) to exclude simple tooling and equipment (*e.g.,* wrenches, winches, dollies). The Department did not accept this recommendation. Tooling and test and support equipment are only controlled if specifically enumerated on the USML. The B group of the new 600 series (*e.g.,* ECCN 9B610) on the CCL should be reviewed for potential controls on tooling and test and support equipment.

In response to the query of one commenting party, the Department confirms that, as is noted in Note 1 to the definition, if a commodity is enumerated on the USML it is ITAR-controlled even if it described on the CCL.

One commenting party requested there be a mechanism by which industry can provide input for determining whether an item is specially designed without the need to notify Congress or change the definition itself. The Department concurs that industry may submit a request in order to clarify the applicability of specially designed. The appropriate mechanism would be a CJ request through which the Department will determine the proper notification requirement.

One commenting party was concerned with the potential inadvertent application of specially designed to aircraft engines not covered by USML Category XIX. The Department confirms that the export jurisdiction of a part specially designed for an engine is determined by the export jurisdiction of the engine for which it is specially designed, and not the jurisdictional status of the aircraft on which it is installed.

One commenting party expressed concern that the proposed definition will require exporters and original equipment manufacturers to engage in extensive analyses of the jurisdictional and classification status of their parts and components, which could result in different exporters coming to different determinations of the same items and a significant increase the number of CJ determination requests due to the unintended consequences of misclassification of items. The Department acknowledges this concern, but believes the long-term benefits of reforming the regulations will outweigh the short-term burdens of adjustment that inevitably accompany such reforms.

One commenting party recommended that after promulgation of the specially designed definition, the agencies continue to provide advisories that include examples of end-items, parts, components, accessories, and attachments that meet or do not meet the standards of the definition. The Department accepts this recommendation, and will provide further guidance and conduct outreach efforts as necessary.

One commenting party noted the application of the ''as a result of 'development' '' standard in the proposed definition is limited by the principle that it will only apply to enumerated items. For this reason, it is essential for Government and the private sector to understand how the ''as a result of development'' standard works when applied to the 600 series in subparagraph ''.y.'' The Department agrees with this comment and revised ITAR § 120.41(a) to apply the ''as a result of development'' standard to ITAR § 120.41(a)(1) and not the broader ''catch-all'' in ITAR § 120.41(a)(2).

One commenting party discussed its interpretation of the impact the specially designed definition will have on the control of forgings, castings, machined bodies, etc., destined for aircraft or other defense articles. ITAR § 121.10 continues to apply in determining the appropriate controls for these articles.

One commenting party expressed concern that ITAR § 120.41(a) (and its ''as a result of 'development' '' standard) and ITAR § 120.41(b)(3) of the definition, when taken together, appear to mean that only commercial off the shelf (''COTS'') items with no changes in form or fit are released from the definition of specially designed. The Department revised the paragraphs in question to address this concern because the Department did not intend such a conclusion to be an implication of the definition.

Two commenting parties recommended the Department use the phrasing provided in the note to paragraph (b) that identifies a ''catch all'' paragraph in all instances of their occurrence in USML categories. The Department accepts this recommendation, and notes that not all USML categories will contain ''catch-all'' control paragraphs.

One commenting party noted the definition still reflects an underlying focus on design intent rather than a focus solely on national security interests and the military functionality of the item. The commenting party also noted regulatory interpretation and compliance would be facilitated if the definition moved further from the concept of design intent towards an analysis of the unique characteristics of the item that imbue it with its military functionality. As noted in the opening of this section, the Department acknowledges that it has not completely ended the practice of determining export jurisdiction based on the item's design intent rather than its performance levels, characteristics, or functions, but it has endeavored to keep it to a minimum.

One commenting party requested clarification on the order of review for USML jurisdiction determination using existing criteria and the specially designed definition. The Department accepted this recommendation and has moved the guidance in the preamble to the specially designed definition provided in the proposed rule to a revised ITAR § 121.1, which is included in this final rule. This revised section also provides guidance on the composition of a category and order of review.

Three commenting parties recommended the word ''commodity'' in ITAR § 120.41(a)(1) refer to the same universe of items as the word ''item'' in the same section of the Department of Commerce's definition for specially designed. The commenting parties further requested the term ''commodity'' explicitly include technology, technical data and assistance, and software. The Department accepted this recommendation in part by including the term ''software'' in ITAR § 120.41(a).

One commenting party recommended the addition of a note to ITAR § 120.41(a)(1) that would include examples of when an item is not covered. The Department did not accept this recommendation. The Department believes the revised, more ''positive,'' USML categories is the appropriate starting point for determining whether an article is covered by the USML. The provisions of examples in the negative would negate the purpose of a positive list.

One commenting party recommended that changes in dimension, material, coatings, or lubricants to an otherwise excluded item (aircraft fasteners in particular) that do not result in low-observable capability should remain excluded. The Department did not accept this comment. The revisions to ITAR § 120.41(b)(2) and (b)(3) should provide the necessary clarification.

The Department has revised ITAR § 120.41(b) and added an additional note to ITAR § 120.41(b)(3) in response to several commenting parties' recommendations to more specifically address the issue of minor modifications to a commodity. The concerns centered on changes to ''fit'' and ''form'' that have no bearing on changes to the ''function'' of a commodity. The Department added the term ''equivalent'' to ITAR § 120.41(b)(3) to account for a commodity whose form was modified solely for fit purposes.

One commenting party noted that limiting ITAR § 120.41(b)(2) to single, unassembled parts will result in continued ITAR licensing of minor components that do not meet the requirements for exclusion. The commenting party recommended including in ITAR § 120.41(b)(2) ''small assemblies and components of a type commonly used in multiple types of commodities.'' The Department did not

accept this recommendation because the proposed change would make the ''release'' too broad and would create the potential for multiple interpretations of the same set of facts.

One commenting party recommended removing as a criterion in ITAR § 120.41(b)(3) the issue of whether a part, component, accessory, or attachment is in production. The Department did not accept this recommendation. Whether a commodity is in development or production is an important factor. The inclusion of this criterion is meant to implement the purpose of ITAR § 120.3 but without imposing the ''predominant'' standard, which is difficult or impossible for many exporters to know or to stay current with as military and civil markets change over the lifecycle of a product.

One commenting party recommended clarification of the terms ''form'' and ''fit.'' The Department accepted this recommendation, and includes a revised ITAR § 120.4 addressing this matter in this final rule.

The Department did not accept the recommendation of one commenting party to remove the term ''serial production'' in Note 1 to ITAR § 120.41(b)(3) because this term is not expressly used in that paragraph. The definition of ''production'' in Note 1 is the EAR definition, which includes the concept of ''serial production.'' ''Production'' is not defined in the ITAR therefore the Department is providing the EAR definition for the purposes of consistency between the USML and CCL versions of the term specially designed.

One commenting party recommended the definitions for the terms ''production'' and ''development'' in Notes 1 and 2 to ITAR § 120.41(b)(3) apply to the entire ITAR and not just to the specially designed definition. The Department did not accept this recommendation. While the adoption of the specially designed definition necessitated the defining of the terms ''production'' and ''development,'' the adoption of the definitions for those terms outside of the specially designed definition was beyond the scope of this review.

One commenting party stated that discriminating between the classifications of ''production'' and ''development'' for commodities in ''production'' that are undergoing ''development'' was unclear, as described in Note 3 to ITAR § 120.41(b)(3), and requested clarification. The Department has accepted this recommendation and has revised Note 3.

One commenting party requested clarification that the intent of ITAR § 120.41(b)(3) is to provide the same function as the note to USML Category VIII (the ''Section 17(c) rule'') and that its scope extends beyond USML Category VIII. The Department confirms this understanding.

One commenting party requested revision of ITAR § 120.41(b)(4) to specifically provide that once an item or commodity is determined to be excluded from a ''catch-all'' provision, the determination remains effective after the item or commodity has entered the marketplace. Although the Department agrees there is no need to revisit a determination made pursuant to ITAR § 120.41(b)(4), it did not revise the regulations in this regard. The Department believes such a revision is unnecessary.

One commenting party noted the difficulty an exporter may have in applying ITAR § 120.41(b)(4) because he may not have knowledge of what the original developer's market expectations were at the time of development. The Department notes exporters would generally use ITAR § 120.41(b)(3) to determine the applicability of specially designed in such cases because its application does not depend upon knowledge of a developer's intent. Developers and manufacturers would generally be the parties to use ITAR § 120.41(b)(4), although (b)(4) would not preclude a developer or manufacturer from informing other exporters of the applicability of the (b)(4) exclusion. In addition, the Department added a new note to ITAR § 120.41(b)(4) and (b)(5) regarding ''knowledge'' to address the underlying concern of the comment.

One commenting party expressed concern with the effect the specially designed definition would have on the control over fundamental research. In particular, the concern was with ITAR § 120.41(b)(5), as the commenting party believes it is not reasonable for there to be development of a part, component, accessory, or attachment with no reasonable expectation of use for a particular application. The definition of ''fundamental research'' contained in ITAR § 120.11 is not changed by the definition of specially designed. The Department has revised ITAR § 120.41(b)(5) to more accurately describe the intent of that exclusion. In particular, it has replaced the phrase ''reasonable expectation'' with ''knowledge'' and added a definition of ''knowledge'' to a new note to ITAR § 120.41(b)(4) and (b)(5). This addresses the instance when research or other knowledge indicates a potential market for an un-enumerated mechanical function or electronic function but does not indicate whether the future buyers will use the function for a civil application, a military application, or both, which was the concern of another commenting party.

The Department accepted one commenting party's recommendation to remove the note to ITAR § 120.41(b)(5), agreeing with the observation that it was redundant.

Transition Plan

With the intention of establishing certain necessary licensing procedures stemming from ECR implementation and mitigating the impact of the changes involved in the revision of the USML and the CCL on U.S. license holders and the defense export industry, the Department implements the following ''Transition Plan,'' which will describe (1) timelines for implementation of changes, (2) certain temporary licensing procedures for items transitioning from the USML to the CCL, and (3) certain permanent licensing procedures pertaining to the export of any item ''subject to the EAR'' (*see* definition of this term in this rule) to be used in or with defense articles controlled on the USML.

The Department notes the following main points regarding licensing procedure during the transition, and thereafter:

- There will be a 180-day transition period between the publication of the final rule for each revised USML category and the effective date of the transition to the CCL for items that will undergo a change in export jurisdiction. This period will allow U.S. license holders time to review their current authorizations and prepare for the transition to the new ECCNs.
- A license or authorization issued by the Department will be effective for up to two years from the effective date of the revised USML category if all the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce.
- A license or authorization issued by the Department will be valid until its expiration if some of the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce.
- USML categories will have a new (x) paragraph, the purpose of which is to allow for ITAR licensing for commodities, software, and technical data subject to the EAR, provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase

documentation submitted with the application.

The Department first presented for public comment its plan for licensing policies and procedures regarding items moving from the export jurisdiction of the Department of State to the Department of Commerce on June 21, 2012 (*see* ''Export Control Reform Transition Plan,'' 77 FR 37346). The comment period ended August 6, 2012. Seventeen parties filed comments during the established comment period recommending changes. The Department's evaluation of the written comments and recommendations follows.

Eight commenting parties stated that the 45-day transition period was insufficient time to accomplish all that was necessary to adapt company systems to the changes and recommended longer transition periods of varying lengths. The Department has accepted this recommendation and has changed the transition period to 180 days.

In response to the recommendation of several commenting parties for shared licensing authority for items changing export jurisdiction, the Department's transition guidance will provide that, for 180 days following the effective date of a revised USML category, licenses will be accepted by both DDTC and BIS for items moving from the USML to the CCL. In addition, DDTC authorizations that pertain wholly to transitioned items will expire two years after the effective date of the relevant final rule moving the items to the CCL. In addition, licenses that have some items remaining on the USML will be valid for all items covered by the license at the time it was issued until it expires. Applicants should refer to the Department of Commerce's companion to this rule (*see* elsewhere in this issue of the **Federal Register**) for information related to BIS licenses adjudicated during the transition period.

Two commenting parties stated that dual jurisdiction/licensing will create a heavy compliance burden for USML end-item manufacturers with international supply chains, as each of the export authorities has different compliance obligations. It will also create confusion as foreign parties may be party to a USML technical assistance agreement and receive items for the project under a Department of Commerce license or Strategic Trade Authorization (STA) license exception. The Department acknowledges this complexity, but notes that ECR will not create a new context in this regard, as current projects routinely require both defense articles and commercial items for completion. Dual compliance requirements already exist and the Department believes the benefits derived from changes implemented under ECR outweigh these concerns.

Two commenting parties recommended that license applications and agreements submitted after publication date of the final rule revising the relevant USML category, but before the implementation date, should be processed as prepublication applications and agreements: valid for two years, or until amended or returned. The Department accepted this recommendation and revised the guidance accordingly.

One commenting party requested clarification of whether sending to a foreign supplier technical data on a USML end-item to allow installation of a 600 series component is both a USML technical data export and CCL installation technology export, creating dual licensing for most foreign sourced commodities. If the technical data is directly related to a defense article, the technical data will be ITAR controlled. If the technical data is for the production, development, etc., of a 600 series or CCL item to be installed in a defense article, the technical data remains EAR controlled. The jurisdiction of the technical data follows the jurisdiction of the related commodity or item.

Five commenting parties recommended that amendments to licenses and authorizations should be allowed during the transition period. The Department accepted this recommendation and revised the guidance accordingly.

Three commenting parties recommended allowing temporary import and export authorizations to last until expired or returned. As the items temporarily imported or exported are to return to their point of origin, per the requirements of the authorizations, there is no national security risk in maintaining the original authorizations. The Department accepted this recommendation and revised the guidance accordingly.

One commenting party noted that currently approved agreements covering dual/third country national employees of the foreign party will be affected by the need to obtain deemed export licenses, and that two years may not be sufficient time to fulfill this requirement. The Department notes that as long as the currently approved agreement has been amended to provide authority for the transitioned items in accordance with the guidance in this notice, the dual/third country national authority would still apply.

Five commenting parties recommended that existing reexport/retransfer authorizations should be grandfathered without expiration. Foreign parties who purchased transitioned items under authorizations that allowed perpetual foreign sales should not have to reauthorize those sales and the U.S. Government should not re-review the authorizations. The Department accepted this recommendation and revised the guidance accordingly. The three scenarios for which this applies are: 1) reexport/retransfer authority granted through a program status DSP–5; 2) the sales territory of a manufacturing license or warehouse and distribution agreement if the agreement continues to be the export authority; and 3) any stand-alone reexport/retransfer authorization received pursuant to ITAR § 123.9(c).

Two commenting parties recommended requiring U.S. exporters to identify ECCNs and prior USML classifications on export documentation for two years following the effective date of transitioned items and mandate prompt responses to requests for ECCNs for legacy items. The Department accepted this recommendation in part. The Department has revised ITAR § 123.9(b) to require identification of the license or other approval to the foreign party.

Seven commenting parties recommended that previously issued commodity jurisdiction (CJ) determinations designating items as not subject to the export jurisdiction of the Department remain valid. This will preserve EAR99 status for items previously so designated and would relieve exporters who have obtained CJ determinations from having to reclassify items. The Department accepted this recommendation and clarified the guidance accordingly.

One commenting party inquired what Automated Export System (AES) entry would be required for items that have transitioned to control under the CCL but are to be exported under a legacy DDTC authorization. The AES entry will remain the same as is required now for a DDTC authorization.

In response to one commenting party's inquiry on what effect the transition will have on recordkeeping requirements, the Department notes records must be maintained for five years following the last transaction, regardless of jurisdiction.

After consideration of the comments received, and in furtherance of the principles of ECR, the Department has decided to institute a new permanent licensing procedure that will allow

ITAR licensing for commodities, software, and technical data subject to the EAR, provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application. This procedure is to be effected by the exporter by use of ''(x) paragraph,'' added to USML Categories VIII and XIX in this rule, and to be added to other USML categories as they are revised. The Department will begin accepting licenses citing a (x) paragraph entry once the 180-day transition period is effective for the related USML category. The President has provided for this delegation of authority from the Secretary of Commerce to the Secretary of State, and Executive Order 13222 has been amended accordingly (*see* 78 FR 16129). The Department has revised various sections of, and added certain sections to, the ITAR to accommodate this delegation of authority: ITAR § 120.5 to add a new paragraph (b) to address the delegation; the addition of ITAR § 120.42 to provide a definition of ''subject to the EAR''; ITAR § 123.1 to provide guidance on how to use the (x) paragraph; and ITAR § 123.9(b) to identify additional requirements when using the (x) paragraph. The Department of Commerce will have the authority to review ''pre-positioned'' license applications during the 180-day transition period for items transitioning to EAR jurisdiction. This means the Department of Commerce will be able to review and process license applications for transitioning items. However, these Department of Commerce licenses would not be issued until on or after the effective date of the relevant final rule moving items from the USML to the CCL. Further guidance is provided in the Department of Commerce's companion to this rule (*see* ''Revision to the Export Administration Regulations: Initial Implementation of Export Control Reform,'' elsewhere in this edition of the **Federal Register**).

Transition Plan

Transition Period

There will be a 180-day transition period between the publication of the final rule for each revised U.S. Munitions List (USML) category and the effective date of the transition to the Commerce Control List (CCL) for items that will undergo a change in export jurisdiction. During this period, license applications will be accepted by both DDTC and BIS for items moving from the USML to the CCL, but BIS will not issue approved licenses for such items until on or after the applicable effective date.

DSP–5 Licenses

Licenses for items transitioning to the CCL that are issued prior to the effective date of the final rule for each revised USML category, and that do not include any items that will remain on the USML, will remain valid until expired, returned by the license holder, or for a period of two years from the effective date of the final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. Licenses containing both transitioning and non-transitioning items (mixed authorizations) will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement imposed on the DDTC authorization will remain in effect if the DDTC authorization is relied upon for export. License amendment requests (DSP–6) received by DDTC during the transition period amending licenses affected by the transition will be adjudicated on a case-by-case basis up until the effective date of the relevant rule.

DSP–61 and DSP–73 Licenses

All temporary licenses that are issued in the period prior to the effective date of the final rule for each revised USML category will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement imposed on the DDTC authorization will remain in effect if the DDTC authorization is relied upon for export. License amendment requests (DSP–62 and DSP–74) received by DDTC during the transition period amending licenses affected by the transition will be adjudicated on a case-by-case basis until the effective date of the relevant rule.

License Applications Received After the Transition Period

All license applications, including amendments, received after the effective date for items that have transitioned to the CCL that are not identified in a (x) paragraph entry will be Returned Without Action with instructions to contact the Department of Commerce.

Technical Assistance Agreements, Manufacturing License Agreements, Warehouse and Distribution Agreements, and Related Reporting Requirements

Agreements and amendments containing both USML and CCL items will be adjudicated up to the effective date of the relevant final rule. Agreements containing transitioning and non-transitioning items that are issued prior to the effective date of the relevant final rule will remain valid until expired, unless they require an amendment, or for a period of two years from the effective date of the relevant final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. In order for an agreement to remain valid beyond two years, an amendment must be submitted to authorize the CCL items using the new (x) paragraph from the relevant USML category. Any activity conducted under an agreement will remain subject to all limitations, provisos, and other requirements stipulated in the agreement.

Agreements containing solely transitioning items that are issued prior to the effective date of the final rule will remain valid for a period of two years from the effective date of the relevant USML category, unless revoked, suspended, or terminated. After the two year period ends, any on-going activity must be conducted under the appropriate Department of Commerce authorization. Agreements and agreement amendments solely for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.

All reporting requirements for Manufacturing License Agreements under ITAR § 124.9(a)(6) and Warehouse and Distribution Agreements under ITAR § 124.14(c)(6) must be complied with and such reports must be submitted to the Department of State while the agreement is relied upon as an export authorization by the exporter.

ITAR Licensing of Items Subject to the EAR

USML categories will have a new (x) paragraph, to be a permanent feature of ITAR licensing. The purpose of this procedure is to allow for ITAR licensing for commodities, software, and technical data subject to the Export Administration Regulations (EAR) provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application.

Commodity Jurisdiction Determinations

Previously issued commodity jurisdiction (CJ) determinations for items deemed to be subject to the EAR shall remain valid. Previously issued CJ determinations for items deemed to be USML but that are subsequently

transitioning to the CCL pursuant to a published final rule will be superseded by the newly revised lists. Exporters are encouraged to review each revised USML category along with its companion CCL category to determine whether the items subject to a CJ have transitioned to the jurisdiction of the Department of Commerce. These CJs are limited to the specific commodity identified in the final determination letter. Consistent with the recordkeeping requirements of the ITAR and the EAR, licensees and foreign persons subject to licenses must maintain records reflecting their assessments of the proper regulatory jurisdiction over their items. License holders unable to ascertain the proper jurisdiction of their items may request a CJ determination from DDTC through the established procedure.

License holders who are certain their items have transitioned to the CCL are encouraged to review the appropriate Export Control Classification Number (ECCN) to determine the classification of their item. License holders who are unsure of the proper ECCN designation may submit a Commodity Classification Automated Tracking System request (CCATS) to the Department of Commerce. *See* 15 CFR 748.3.

Parties making a classification self-determination or submitting a CCATS are advised that only a CJ determination provides an official and exclusive decision on whether or not an item is a defense article on the USML.

Reexport/Retransfer of USML Items That Have Transitioned to the CCL

Following the effective date of transition, foreign persons (*i.e.,* end-users, foreign consignees, and foreign intermediate consignees) who receive, via a Department of State authorization, an item that they are certain has transitioned to the CCL (*e.g.,* confirmed in writing by manufacturer or supplier), should treat the item as such and submit requests for post-transition reexports or retransfers to the Department of Commerce, as may be required by the EAR.

If reexport or retransfer was previously authorized under a DDTC authorization, then that reexport or retransfer authority remains valid. The three scenarios for which this applies are: 1) reexport/retransfer authority granted through a program status DSP–5; 2) the sales/distribution territory of a manufacturing license or warehouse and distribution agreement if the agreement continues to provide the export authority; or 3) any stand-alone reexport/retransfer authorization received pursuant to ITAR § 123.9.

Foreign persons or U.S. persons abroad that have USML items in their inventory at the effective date of transition should review both the USML and the CCL to determine the proper jurisdiction. If the item is controlled by the Department of Commerce, any reexport or retransfer must comply with the requirements of the EAR. If doubt exists on jurisdiction of the items, the foreign person should contact the original exporter or manufacturer.

Regulatory Oversight Responsibilities

For those items transitioning from the USML to the CCL, the Department of Commerce will exercise regulatory oversight, as of the effective date, for the purposes of licensing and enforcement of exports from the United States where no Department of State authorization is being used. The Department of State will continue to exercise regulatory oversight concerning all Department of State licenses, agreements, and other authorizations, including those where exporters, temporary importers, manufacturers, and brokers continue to use previously issued Department of State licenses and agreements, until the activity is covered by a Department of Commerce authorization.

License holders may decide to apply for and use Department of Commerce authorizations for export of the newly transitioned CCL items rather than continue to use previously issued Department of State authorizations. In such cases, license holders must return the Department of State licenses in accordance with ITAR § 123.22 after they have obtained the required Department of Commerce authorizations.

Violations and Voluntary Disclosures of Possible Violations

Exporters, temporary importers, manufacturers, and brokers are cautioned to closely monitor ITAR and EAR compliance concerning Department of State licenses and agreements for items transitioning from the USML to the CCL.

On the effective date of each rule that adds an item to the CCL that was previously subject to the ITAR, that item will be subject to the EAR. Authorizations issued by DDTC before the effective date may continue to be used as described above by exporters, temporary importers, manufacturers, and brokers. The violation of a previously issued DDTC authorization (including any condition of a DDTC authorization) that is continued to be used as described above is a violation of the ITAR.

With respect to a transitioned item, persons who discover a possible violation of the ITAR, the EAR, or any license or authorization issued thereunder, are strongly encouraged to disclose this violation to DDTC, BIS, or both offices, as appropriate, pursuant to established procedures for submitting voluntary disclosures.

License holders and foreign persons must obtain Department of State authorization before disposing, reselling, transshipping, or otherwise transferring any item in their possession that remains on the USML.

Registration

Manufacturers, exporters, and brokers are required to register with the Department of State if their activities involve USML defense articles or defense services.

Registered manufacturers, exporters, temporary importers, defense service providers and brokers (''registrants'') are reminded of the requirement to notify DDTC in writing when they are no longer in the business of manufacturing, exporting, or brokering USML defense articles or defense services. Registrants who determine that all of their activities involve articles or services that will transition from the USML to the CCL and therefore are no longer required to register with the Department of State must provide such written notification to the Department of State. Instructions for providing such notification are accessible on the DDTC Web site (*www.pmddtc.state.gov*). Note that DDTC will not cancel or revoke those registrations, but will allow the registration to expire. Registrants who determine that all of their activities will be subject to Department of Commerce jurisdiction as a result of the transition from the USML to the CCL must nevertheless maintain registration with the Department of State until the effective date of the applicable final rule transitioning the registrant's items to the CCL.

Registrants who determine they will no longer be required to register with the Department of State after the effective date of the final rule transitioning the registrant's items to the CCL, and who have registration renewal dates that occur after publication of the final rule but before its effective date, may request to have their registration expiration date extended to the effective date of transition and not be charged a registration fee. In those cases, registrants must insert the following statement as the first paragraph in the written notification previously mentioned: *''(Insert company name) requests DDTC extend our registration*

expiration date to the effective date of transition to CCL for USML Category (insert Category number) items and waive the registration fee. (insert company name) certifies that no changes in our eligibility from what is represented in our previously submitted DS–2032 Statement of Registration has occurred (otherwise specify change in eligibility status).'' If a registrant subsequently determines that its registration with the Department of State must instead be renewed, the registration renewal fee will be recalculated to include any Department of State licenses the registrant received during the period when the registration expiration date was extended.

Registrants that avail themselves of the opportunity to continue using previously issued Department of State authorizations (licenses and agreements) for items that have transitioned to the CCL must maintain current registration with the Department of State, which includes payment of registration fees.

Additional Required Changes

As noted in the responses to the public comments for specially designed and transition guidance, the Department has identified the following ITAR amendments as necessary and beneficial for the implementation of the transition plan and the application of the specially designed definition.

The Department has revised ITAR § 120.2 to specify the method by which changes are made to the U.S. Munitions List.

The Department has revised ITAR § 120.3 to more accurately describe the policy used in completing the revisions to the USML categories and to account for the definition of specially designed. In concert with this change, the Department also revised ITAR § 120.4(d) to reflect the policy and provide instruction on applying the terms ''form,'' ''fit,'' ''function,'' and ''performance capability.''

Pursuant to amendment to Executive Order 13222 and upon agreement of the Secretaries of State and Commerce, the Department amended ITAR § 120.5 to provide for ITAR licensing of items subject to the EAR, provided these items meet certain criteria provided in amended ITAR § 123.1. In addition, a definition for the term ''subject to the EAR'' is established in § 120.42.

In the revision of the USML categories, the Department has added specific entries regarding classified articles and data. Section 120.10 and USML Category XVII have been amended to account for classified articles and data not clearly enumerated on the USML.

With the adoption of the new definition of specially designed, the Department has revised USML Category XXI and ITAR § 121.8(g) to remove the phrases, ''specifically designed, developed, configured, adapted, or modified for military purposes'' and ''specifically designed, modified or adapted.''

The Department has revised ITAR § 121.1 to incorporate a portion of the instruction included in the specially designed definition included in the proposed rule in a revised introduction to the USML. The revised introduction also includes further guidance on use of the USML.

The Department has revised ITAR § 121.10 for forgings, castings, and machined bodies for consistency with the CCL and the Wassenaar Arrangement.

Sections 120.29 and 121.1(c) are revised to update the information provided on the Missile Technology Control Regime (MTCR) Annex and to introduce the new method of identifying articles common to the MTCR Annex and the USML. Section 121.2 is revised to remove reference to ITAR § 121.16. Once all revised USML categories are published as final rules, ITAR § 121.16 will be placed in reserve, and the parenthetical ''(MT)'' will be used at the end of each USML section containing such articles.

Section 123.1 is revised to provide guidance on the use of paragraph (x) in USML categories and other administrative changes.

The Department has revised ITAR § 123.9(b) to update the destination control statement to require the inclusion of the license number or exemption citation and clarify the need for all parties to the transaction to obtain this information. As well, it requires applicants using paragraph (x) of the revised USML categories to provide additional information to the foreign parties regarding the jurisdiction of items exported pursuant to paragraph (x). These changes are necessary to ensure industry compliance with the correct licensing authority.

Adoption of Proposed Rules and Other Changes

Having reviewed and evaluated the comments and recommended changes for the USML Category VIII, USML Category XIX, and specially designed proposed rules, the Department has determined that it will, and hereby does, adopt them, with changes noted and other edits, and promulgates them in final form under this rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department has published this rule as separate proposed rules identified as 1400–AC96, 1400–AC98, and 1400–AD22, each with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

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

Executive Order 13175

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

Paperwork Reduction Act

Following is a listing of approved collections that will be affected by revision, pursuant to the President's Export Control Reform (ECR) initiative, of the U.S. Munitions List (USML) and the Commerce Control List. This final rule begins implementation of ECR. Other final rules will follow. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the categories published in this rule:

(1) Statement of Registration, DS–2032, OMB No. 1405–0002. The Department estimates that 1,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

(2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003. The Department estimates that there will be 35,000 fewer DSP–5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually. In addition, the DSP–5 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013. The Department estimates that there will be 200 fewer DSP–61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually. In addition, the DSP–61 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily imported.

(4) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023. The Department estimates that there will be 800 fewer DSP–73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually. In addition, the DSP–73 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily exported.

(5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually. In addition, the amendment forms will allow respondents to select USML Category XIX, a newly-established category, as a description of articles the subject of the amendment request.

(6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually. In addition, the DSP–5, the form used for the purposes of electronically submitting agreements, will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the International Traffic in Arms Regulations (ITAR) will decline commensurate to the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that 1,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 20,000 hours annually. The ITAR does provide, though, for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

(8) Export Declaration of Defense Technical Data or Services, DS–4071, OMB No. 1405–0157. The Department estimates that there will be 2,000 fewer declaration submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

List of Subjects in 22 CFR Parts 120, 121, and 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, and 123 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

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

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.2 is revised to read as follows:

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of import or export controls. The President has delegated to the Secretary of State the authority to control the export and temporary import of defense articles and services. The items designated by the Secretary of State for purposes of export and temporary import control constitute the U.S. Munitions List specified in part

121 of this subchapter. Defense articles on the U.S. Munitions List specified in part 121 of this subchapter that are also subject to permanent import control by the Attorney General on the U.S. Munitions Import List enumerated in 27 CFR part 447 are subject to temporary import controls administered by the Secretary of State. Designations of defense articles and defense services are made by the Department of State with the concurrence of the Department of Defense. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778). For a designation or determination on whether a particular item is enumerated on the U.S. Munitions List, *see* § 120.4 of this subchapter.

■ 3. Section 120.3 is revised to read as follows:

§ 120.3 Policy on designating or determining defense articles and services on the U.S. Munitions List.

(a) For purposes of this subchapter, a specific article or service may be designated a defense article (*see* § 120.6 of this subchapter) or defense service (*see* § 120.9 of this subchapter) if it:

(1) Meets the criteria of a defense article or defense service on the U.S. Munitions List; or

(2) Provides the equivalent performance capabilities of a defense article on the U.S. Munitions List.

(b) For purposes of this subchapter, a specific article or service shall be determined in the future as a defense article or defense service if it provides a critical military or intelligence advantage such that it warrants control under this subchapter.

Note to paragraphs (a) and (b): An article or service determined in the future pursuant to this subchapter as a defense article or defense service, but not currently on the U.S. Munitions List, will be placed in U.S. Munitions List Category XXI until the appropriate U.S. Munitions List category has been amended to provide the necessary entry.

(c) A specific article or service is not a defense article or defense service for purposes of this subchapter if it:

(1) Is determined to be under the jurisdiction of another department or agency of the U.S. Government (*see* § 120.5 of this subchapter) pursuant to a commodity jurisdiction determination (*see* § 120.4 of this subchapter) unless superseded by changes to the U.S. Munitions List or by a subsequent commodity jurisdiction determination; or

(2) Meets one of the criteria of § 120.41(b) of this subchapter when the article is used in or with a defense article and specially designed is used as a control criteria (*see* § 120.41 of this subchapter).

Note to § 120.3: The intended use of the article or service after its export (*i.e.,* for a military or civilian purpose), by itself, is not a factor in determining whether the article or service is subject to the controls of this subchapter.

■ 4. Section 120.4 is amended by revising paragraph (d) to read as follows:

§ 120.4 Commodity jurisdiction.

* * * * *

(d)(1) [Reserved]

(2) A designation that an article or service meets the criteria of a defense article or defense service, or provides the equivalent performance capabilities of a defense article on the U.S. Munitions List set forth in this subchapter, is made on a case-by-case basis by the Department of State, taking into account:

(i) The form and fit of the article; and

(ii) The function and performance capability of the article.

(3) A designation that an article or service has a critical military or intelligence advantage such that it warrants control under this subchapter is made, on a case-by-case basis, by the Department of State, taking into account:

(i) The function and performance capability of the article; and

(ii) The nature of controls imposed by other nations on such items (including the Wassenaar Arrangement and other multilateral controls).

Note 1 to paragraph (d): The *form* of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The *fit* of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. The *function* of a commodity is the action or actions it is designed to perform. *Performance capability* is the measure of a commodity's effectiveness to perform a designated function in a given environment (*e.g.,* measured in terms of speed, durability, reliability, pressure, accuracy, efficiency).

Note 2 to paragraph (d): For software, the *form* means the design, logic flow, and algorithms. The *fit* is defined by its ability to interface or connect with a defense article. The *function* means the action or actions the software performs directly related to a defense article or as a standalone application.

Performance capability means the measure of the software's effectiveness to perform a designated function.

* * * * *

■ 5. Section 120.5 is revised to read as follows:

§ 120.5 Relation to regulations of other agencies.

(a) If a defense article or service is covered by the U.S. Munitions List set forth in this subchapter, its export and temporary import is regulated by the Department of State (*see* also § 120.2 of this subchapter). The President has delegated the authority to control defense articles and services for purposes of permanent import to the Attorney General. The defense articles and services controlled by the Secretary of State and the Attorney General collectively comprise the U.S. Munitions List under the Arms Export Control Act (AECA). As the Attorney General exercises independent delegated authority to designate defense articles and services for purposes of permanent import controls, the permanent import control list administered by the Department of Justice has been separately labeled the U.S. Munitions Import List (27 CFR part 447) to distinguish it from the list set out in this subchapter. In carrying out the functions delegated to the Attorney General pursuant to the AECA, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace and the external security, and foreign policy of the United States. The Department of Commerce regulates the export, reexport, and in-country transfer of items on the Commerce Control List (CCL) and other items subject to its jurisdiction, as well as the provision of certain proliferation activities, under the Export Administration Regulations (EAR) (15 CFR parts 730 through 774). For the relationship of this subchapter to regulations of the Department of Energy and the Nuclear Regulatory Commission, *see* § 123.20 of this subchapter.

(b) A license or other approval from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (*see* § 120.42 of this subchapter). Separate approval from the Department of Commerce is not required for these items when approved for export under a Department of State license or other approval. Those items subject to the EAR exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce for any subsequent transactions. The inclusion of items subject to the EAR on a Department of State license or approval does not change the jurisdiction of the items.

(*See* § 123.1(b) of this subchapter for guidance on identifying items subject to the EAR in a license application to the Department of State.)

■ 6. Section 120.10 is amended by revising paragraphs (a)(2) through (4) and re-designating paragraph (a)(5) as paragraph (b) and revising it to read as follows:

§ 120.10 Technical data.

(a) * * *

* * * * *

(2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software as defined in § 121.8(f) of this subchapter directly related to defense articles.

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

■ 7. Section 120.29 is revised to read as follows:

§ 120.29 Missile Technology Control Regime.

(a) For purposes of this subchapter, *Missile Technology Control Regime (MTCR)* means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(b) The term *MTCR Annex* means the MTCR Guidelines and the Equipment, Software and Technology Annex of the MTCR, and any amendments thereto.

(c) *List of all items on the MTCR Annex.* Section 71(a) of the Arms Export Control Act (22 U.S.C. 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under Section 6(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(1)), as amended. MTCR Annex items specified in the U.S. Munitions List shall be identified in § 121.16 of this subchapter or annotated by the parenthetical ''(MT)'' at the end of each applicable paragraph.

■ 8. Section 120.41 is added to read as follows:

§ 120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (*see* § 121.8(f) of this subchapter) is ''specially designed'' if it:

(1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or

(2) Is a part (*see* § 121.8(d) of this subchapter), component (*see* § 121.8(b) of this subchapter), accessory (*see* § 121.8(c) of this subchapter), attachment (*see* § 121.8(c) of this subchapter), or software for use in or with a defense article.

(b) A part, component, accessory, attachment, or software is not controlled by a U.S. Munitions List ''catch-all'' or technical data control paragraph if it:

(1) Is subject to the EAR pursuant to a commodity jurisdiction determination;

(2) Is, regardless of form or fit, a fastener (*e.g.,* screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;

(3) Has the same function, performance capabilities, and the same or ''equivalent'' form and fit as a commodity or software used in or with a commodity that:

(i) Is or was in production (*i.e.,* not in development); and

(ii) Is not enumerated on the U.S. Munitions List;

(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or

(5) Was or is being developed as a general purpose commodity or software, *i.e.,* with no knowledge for use in or with a particular commodity (*e.g.,* a F/A–18 or HMMWV) or type of commodity (*e.g.,* an aircraft or machine tool).

Note 1 to paragraph (a): The term ''enumerated'' refers to any article on the U.S. Munitions List or the Commerce Control List and not in a ''catch-all'' paragraph.

Note 2 to paragraph (a): The term ''commodity'' refers to any article, material, or supply, except technology/technical data or software.

Note to paragraph (a)(1): An example of a commodity that as a result of development has properties peculiarly responsible for achieving or exceeding the controlled performance levels, functions, or characteristics in a U.S. Munitions List category would be a swimmer delivery vehicle specially designed to dock with a submarine to provide submerged transport for swimmers or divers from submarines.

Note to paragraph (b): A ''catch-all'' paragraph is one that does not refer to specific types of parts, components, accessories, or attachments, but rather controls parts, components, accessories, or attachments if they were specially designed for an enumerated item. For the purposes of the U.S. Munitions List, a ''catch-all'' paragraph is delineated by the phrases ''and specially designed parts and components therefor,'' or ''parts, components, accessories, attachments, and associated equipment specially designed for.''

Note 1 to paragraph (b)(3): For the purpose of this definition, ''production'' means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes ''serial production'' where commodities have passed production readiness testing (*i.e.,* an approved, standardized design ready for large scale production) and have been or are being produced on an assembly line for multiple commodities using the approved, standardized design.

Note 2 to paragraph (b)(3): For the purpose of this definition, ''development'' is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

Note 3 to paragraph (b)(3): Commodities in ''production'' that are subsequently subject to ''development'' activities, such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (*e.g.,* an increased mean time between failure (MTBF)), including those pertaining to quality improvements, cost reductions, or feature enhancements, remain in ''production.'' However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in ''development'' until and unless they enter into ''production.''

Note 4 to paragraph (b)(3): With respect to a commodity, ''equivalent'' means its form has been modified solely for fit purposes.

Note 1 to paragraphs (b)(4) and (5): For a defense article not to be specially designed on the basis of paragraph (b)(4) or (5) of this section, documents contemporaneous with its development, in their totality, must establish the elements of paragraph (b)(4) *or* (5). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the commodity may not be excluded from being specially designed by either paragraph (b)(4) or (5).

Note 2 to paragraphs (b)(4) and (5): For the purpose of this definition, ''knowledge''

includes not only the positive knowledge a circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

■ 9. Section 120.42 is added to read as follows:

§ 120.42 Subject to the Export Administration Regulations (EAR).

Items ''subject to the EAR'' are those items listed on the Commerce Control List in part 774 of the EAR and all other items that meet the definition of that term in accordance with § 734.3 of the EAR. The EAR is found at 15 CFR parts 730 through 774.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 10. The authority citation for part 121 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 11. Section 121.1 is amended by revising paragraphs (a) through (c), U.S. Munitions List Category VIII, Category XVII, Category XIX, and Category XXI, and adding paragraphs (d) and (e), to read as follows:

§ 121.1 General. The United States Munitions List.

(a) The following articles, services, and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act. Changes in designations will be published in the **Federal Register**. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically through the Internet Web site of the Directorate of Defense Trade Controls.

(b)(1) *Order of review.* In order to classify your article on the U.S. Munitions List, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the U.S. Munitions List. Once the appropriate category is identified, you should match the particular characteristics and functions of your article to a specific entry within the appropriate category.

(2) *Composition of an entry.* Within each U.S. Munitions List category, defense articles are enumerated by an alpha paragraph designation. These designations may include subparagraph(s) to further define the enumerated defense article. Each U.S. Munitions List category starts with end-platform designations followed by major systems and equipment, and parts, components, accessories, and attachments. Most U.S. Munitions List categories contain an entry on technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) related to the enumerated defense articles of that U.S. Munitions List category.

(3) *Significant Military Equipment.* An asterisk may precede an entry in a U.S. Munitions List category. The asterisk means the enumerated defense article is deemed to be ''Significant Military Equipment'' to the extent specified in § 120.7 of this subchapter. The asterisk is placed as a convenience to help identify such defense articles. Note that technical data directly related to the manufacture or production of any defense articles enumerated in any category designated as Significant Military Equipment (SME) is also designated as SME.

(c) *Missile Technology Control Regime (MTCR) Annex.* Inclusion in § 121.16 of this subchapter, or annotation with the parenthetical ''(MT)'' at the end of a U.S. Munitions List paragraph, indicates those defense articles and defense services that are on the MTCR Annex. *See* § 120.29 of this subchapter.

(d) *Specially Designed.* When applying the definition of specially designed (*see* § 120.41 of this subchapter), follow the sequential analysis set forth as follows:

(1) if your commodity or software is controlled for reasons other than having a specially designed control parameter on the U.S. Munitions List, no further review of the definition of specially designed is required.

(2) if your commodity or software is not enumerated on the U.S. Munitions List, it may be controlled because of a specially designed control parameter. If so, begin any analysis with § 120.41(a) and proceed through each subsequent paragraph. If a commodity or software would not be controlled as a result of the application of the standards in § 120.41(a), then it is not necessary to work through § 120.41(b).

(3) if a commodity or software is controlled as a result of § 120.41(a), then it is necessary to continue the analysis and to work through each of the elements of § 120.41(b).

(4) commodities or software described in any § 120.41(b) subparagraph are not specially designed commodities or software controlled on the U.S. Munitions List, but may be subject to the jurisdiction of another U.S. Government regulatory agency (*see* § 120.5 of this subchapter).

(e) *Classified.* For the purpose of this subchapter, ''classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

* * * * *

Category VIII—Aircraft and Related Articles

(a) Aircraft (*see* § 121.3 of this subchapter) as follows:

*(1) Bombers;

*(2) Fighters, fighter bombers, and fixed-wing attack aircraft;

*(3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;

*(4) Attack helicopters;

*(5) Unarmed military unmanned aerial vehicles (UAVs) (MT if the UAV has a ''range'' equal to or greater than 300km);

*(6) Armed unmanned aerial vehicles (UAVs) (MT if the UAV has a ''range'' equal to or greater than 300km);

*(7) Military intelligence, surveillance, and reconnaissance aircraft;

*(8) Electronic warfare, airborne warning and control aircraft;

(9) Air refueling aircraft and strategic airlift aircraft;

(10) Target drones (MT if the drone has a ''range'' equal to or greater than 300km);

(11) Aircraft incorporating any mission system controlled under this subchapter;

(12) Aircraft capable of being refueled in flight including hover-in-flight refueling (HIFR); or

*(13) Optionally Piloted Vehicles (OPV) (MT if the OPV has a ''range'' equal to or greater than 300km).

Note 1 to paragraph (a): ''Range'' is the maximum distance that the specified aircraft system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining ''range.'' The ''range'' for aircraft systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For aircraft systems, the ''range'' will be determined for a one-way distance using the most fuel-efficient flight profile (*e.g.,* cruise speed and altitude), assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

(b) [Reserved]

(c) [Reserved]

(d) Ship-based launching and recovery equipment specially designed for defense articles described in paragraph (a) of this category and land-based variants thereof (MT if the ship-based launching and recovery equipment is for an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km).

Note to paragraph (d): Fixed land-based arresting gear is not included in this paragraph.

*(e) Inertial navigation systems (INS), aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specially designed for aircraft controlled in this category or controlled in ECCN 9A610 and all specially designed components, parts, and accessories therefor (MT if the INS, IMU, or AHRS is for an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km). For other inertial reference systems and related components refer to USML Category XII(d).

(f) Developmental aircraft and specially designed parts, components, accessories, and attachments therefor funded by the Department of Defense.

Note 1 to paragraph VIII(f): Paragraph VIII(f) does not control developmental aircraft and specially designed parts, components, accessories, and attachments therefor (a) determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter) or (b) identified in the relevant Department of Defense contract as being developed for both civil and military applications.

Note 2 to paragraph VIII(f): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

(g) [Reserved]

(h) Aircraft parts, components, accessories, attachments, associated equipment and systems, as follows:

(1) Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin aircraft: the B–1B, B–2, F–15SE, F/A–18 E/F/G, F–22, F–35 and future variants thereof; or the F–117 or U.S. Government technology demonstrators. Parts, components, accessories, attachments, and equipment of the F–15SE and F/A–18 E/F/G that are common to earlier models of these aircraft, unless listed in paragraph (h) of this category, are subject to the EAR;

(2) Face gear gearboxes, split-torque gearboxes, variable speed gearboxes, synchronization shafts, interconnecting drive shafts, or rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and able to operate 30 minutes with loss of lubrication and specially designed parts and components therefor;

(3) Tail boom, stabilator and automatic rotor blade folding systems and specially designed parts and components therefor;

(4) Wing folding systems and specially designed parts and components therefor;

(5) Tail hooks and arresting gear and specially designed parts and components therefor;

(6) Bomb racks, missile launchers, missile rails, weapon pylons, pylon-to-launcher adapters, unmanned aerial vehicle (UAV) launching systems, external stores support systems for ordnance or weapons, and specially designed parts and components therefor (MT if the bomb rack, missile launcher, missile rail, weapon pylon, pylon-to-launcher adapter, UAV launching system, or external stores support system is for a UAV, drone, or missile that has a ''range'' equal to or greater than 300 km);

(7) Damage or failure-adaptive flight control systems specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(8) Threat-adaptive autonomous flight control systems;

(9) Non-surface-based flight control systems and effectors (*e.g.,* thrust vectoring from gas ports other than main engine thrust vector);

(10) Radar altimeters with output power management or signal modulation (*i.e.,* frequency hopping, chirping, direct sequence-spectrum spreading) LPI (low probability of intercept) capabilities (MT if for an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km);

(11) Air-to-air refueling systems and hover-in-flight refueling (HIFR) systems and specially designed parts and components therefor;

(12) Unmanned aerial vehicle (UAV) flight control systems and vehicle management systems with swarming capability (*i.e.,* UAVs interact with each other to avoid collisions and stay together, or, if weaponized, coordinate targeting) (MT if for a UAV, drone or missile that has a ''range'' equal to or greater than 300 km);

(13) Lithium-ion batteries that provide greater than 28 VDC nominal;

(14) Lift fans, clutches, and roll posts for short take-off, vertical landing (STOVL) aircraft and specially designed parts and components for such lift fans and roll posts;

(15) Integrated helmets incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions (*e.g.,* Helmet Mounted Cueing Systems, Joint Helmet Mounted Cueing Systems (JHMCS), Helmet Mounted Displays, Display and Sight Helmets (DASH));

(16) Fire control computers, stores management systems, armaments control processors, aircraft-weapon interface units and computers (*e.g.,* AGM–88 HARM Aircraft Launcher Interface Computer (ALIC));

(17) Mission computers, vehicle management computers, and integrated core processers specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(18) Drive systems and flight control systems specially designed to function after impact of a 7.62mm or larger projectile;

(19) Thrust reversers specially designed to be deployed in flight for aircraft controlled in this category or controlled in ECCN 9A610;

*(20) Any part, component, accessory, attachment, equipment, or system that:

(i) is classified;

(ii) contains classified software; or

(iii) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization;

(21) Printed circuit boards or patterned multichip modules for which the layout is specially designed for defense articles in this category;

(22) Radomes or electromagnetic antenna windows specially designed for aircraft or UAVs that:

(i) incorporate radio frequency selective surfaces;

(ii) operate in multiple or more non-adjacent radar bands;

(iii) incorporate a structure that is specially designed to provide ballistic protection from bullets, shrapnel, or blast;

(iv) have a melting point greater than 1,300°C and maintain a dielectric constant less than 6 at temperatures greater than 500 °C;

(v) are manufactured from ceramic materials with a dielectric constant less than 6 at any frequency from 100 MHz to 100 GHz;

(vi) maintain structural integrity at stagnation pressures greater than 6,000 pounds per square foot; or

(vii) withstand a combined thermal shock greater than 4.184 x 10^6 J/m^2 accompanied by a peak overpressure of greater than 50 kPa (MT for radomes meeting this criteria);

(23) Fuel cells specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(24) Thermal engines specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(25) Thermal batteries specially designed for aircraft controlled in this category or controlled in ECCN 9A610 (MT if the thermal battery is for an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km); or

(26) Thermionic generators specially designed for aircraft controlled in this category or controlled in ECCN 9A610.

(i) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in ECCNs 9A610, 9B610, 9C610, and 9D610 and defense services using classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(j)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

Note: Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units, and Attitude and Heading Reference Systems in paragraph (e) and parts, components, accessories, and attachments in paragraphs (h)(2)–(5), (7), (13), (14), (17)–(19), and (21)–(26) are licensed by the Department of Commerce when incorporated in a military aircraft subject to the EAR and classified under ECCN 9A610. Replacement systems, parts, components, accessories and attachments are subject to the controls of the ITAR.

* * * * *

Category XVII—Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated

*(a) All articles, and technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) relating thereto, that are classified in the interests of national security and that are not otherwise enumerated on the U.S. Munitions List.

* * * * *

Category XIX—Gas Turbine Engines and Associated Equipment

*(a) Turbofan and Turbojet engines (including technology demonstrators) capable of 15,000 lbf (66.7 kN) of thrust or greater that have any of the following:

(1) with or specially designed for thrust augmentation (afterburner);

(2) thrust or exhaust nozzle vectoring;

(3) parts or components controlled in paragraph (f)(6) of this category;

(4) specially designed for sustained 30 second inverted flight or negative g maneuver; or

(5) specially designed for high power extraction (greater than 50 percent of engine thrust at altitude) at altitudes greater than 50,000 feet.

*(b) Turboshaft and Turboprop engines (including technology demonstrators) capable of 1500 mechanical shp (1119 kW) or greater and are specially designed with oil sump sealing when the engine is in the vertical position.

*(c) Engines (including technology demonstrators) specially designed for armed or military unmanned aerial vehicle systems, cruise missiles, or target drones (MT if for an engine used in an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km).

*(d) GE38, AGT1500, CTS800, TF40B, T55, TF60, and T700 engines.

*(e) Digital engine control systems (*e.g.,* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) specially designed for gas turbine engines controlled in this category (MT if the digital engine control system is for an unmanned aerial vehicle, drone, or missile that has a ''range'' equal to or greater than 300 km).

Note to paragraph (e): Digital electronic control systems autonomously control the engine throughout its whole operating range from demanded engine start until demanded engine shut-down, in both normal and fault conditions.

(f) Parts, components, accessories, attachments, associated equipment, and systems as follows:

(1) Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin engines (and military variants thereof): AE1107C, F101, F107, F112, F118, F119, F120, F135, F136, F414, F415, J402, GE38, TF40B, and TF60;

*(2) Hot section components (*i.e.,* combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) specially designed for gas turbine engines controlled in this category;

(3) Uncooled turbine blades, vanes, disks, and tip shrouds specially designed for gas turbine engines controlled in this category;

(4) Combustor cowls, diffusers, domes, and shells specially designed for gas turbine engines controlled in this category;

(5) Engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) specially designed for gas turbine engines and components controlled in this category;

*(6) Any part, component, accessory, attachment, equipment, or system that:

(i) is classified;

(ii) contains classified software; or

(iii) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization; or

(7) Printed circuit boards or patterned multichip modules for which the layout is specially designed for defense articles in this category.

(g) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category and classified technical data directly related to items controlled in ECCNs 9A619, 9B619, 9C619, and 9D619 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(h)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

* * * * *

Category XXI—Articles, Technical Data, and Defense Services Not Otherwise Enumerated

*(a) Any article not enumerated on the U.S. Munitions List may be included in this category until such time as the appropriate U.S. Munitions List category is amended. The decision on whether any article may be included in this category, and the designation of the defense article as not Significant Military Equipment (*see* § 120.7 of this subchapter), shall be made by the Director, Office of Defense Trade Controls Policy.

(b) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles covered in paragraph (a) of this category.

■ 12. Section 121.2 is revised to read as follows:

§ 121.2 Interpretations of the U.S. Munitions List

The following interpretations explain and amplify the terms used in § 121.1 of this subchapter. These interpretations have the same force as if they were a part of the U.S. Munitions List category to which they refer.

■ 13. Section 121.3 is revised to read as follows:

§ 121.3 Aircraft.

(a) In Category VIII, except as described in paragraph (b) below, ''aircraft'' means aircraft that:

(1) Are U.S.-origin aircraft that bear an original military designation of A, B, E, F, K, M, P, R, or S;

(2) Are foreign-origin aircraft specially designed to provide functions equivalent to those of the aircraft listed in paragraph (a)(1) of this section;

(3) Are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy targets (*e.g.,* firing lasers, launching rockets, firing missiles, dropping bombs, or strafing);

(4) Are strategic airlift aircraft with a roll-on/roll-off ramp and capable of airlifting payloads over 35,000 lbs to ranges over 2,000 nm without being refueled in-flight into short or unimproved airfields;

(5) Are capable of being refueled in-flight;

(6) Incorporate any ''mission system'' controlled under this subchapter. ''Mission system'' is defined as a ''system'' (*see* § 121.8(g) of this subchapter) that is a defense article that performs specific military functions beyond airworthiness, such as by providing military communication, radar, active missile counter measures, target designation, surveillance, or sensor capabilities; or

(7) Are Optionally Piloted Vehicles (OPV) (*i.e.,* aircraft specially designed to operate with and without a pilot physically located in the aircraft).

(b) Aircraft specially designed for military applications that are not identified in paragraph (a) of this section are subject to the EAR and classified as ECCN 9A610, including any unarmed military aircraft, regardless of origin or designation, manufactured prior to 1956 and unmodified since manufacture. Modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are considered ''unmodified'' for the purposes of this paragraph.

■ 14. Section 121.8 is amended by revising the section heading and paragraph (g) to read as follows:

§ 121.8 End-items, components, accessories, attachments, parts, firmware, software, and systems.

* * * * *

(g) A *system* is a combination of end-items, parts, components, accessories, attachments, firmware, or software that operate together to perform a specialized military function.

■ 15. Section 121.10 is revised to read as follows:

§ 121.10 Forgings, castings, and machined bodies.

The U.S. Munitions List controls as defense articles those forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles.

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

■ 16. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 17. The heading for part 123 is revised to read as set forth above.

■ 18. Section 123.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 123.1 Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. The applicant must be registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter prior to submitting an application. Applications for unclassified exports and temporary imports must be submitted electronically. Applications for classified exports and classified temporary imports must be submitted via paper. Further guidance is provided on the Internet Web site of the Directorate of Defense Trade Controls. The application forms for export or temporary import are as follows:

(1) Unclassified permanent exports must be made on Form DSP–5;

(2) Unclassified temporary exports must be made on Form DSP–73;

(3) Unclassified temporary imports must be made on Form DSP–61; or

(4) Classified exports or temporary imports must be made on Form DSP–85.

(b) Applications for Department of State export or temporary import licenses for proposed exports or temporary imports of defense articles, including technical data, may include commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) if:

(1) The purchase documentation (*e.g.,* purchase order, contract, letter of intent, or other appropriate documentation) includes both defense articles enumerated on the U.S. Munitions List and items on the Commerce Control List;

(2) The commodities, software, and technical data subject to the EAR are for end-use in or with the U.S. Munitions List defense article(s) proposed for export; and

(3) The license application separately enumerates the commodities, software, and technical data subject to the EAR in a U.S. Munitions List ''(x)'' paragraph entry.

(c) As a condition to the issuance of a license or other approval, the Directorate of Defense Trade Controls may require all pertinent documentation regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP–5, DSP–61, DSP–73, and DSP–85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided. Stating

''Not Applicable'' or ''See Attached'' is not acceptable. See the Directorate of Defense Trade Controls Internet Web site for additional guidance on the completion of a license application form;

(2) Attachments and supporting technical data or brochures should be submitted with the license application. All freight forwarders and U.S. consignors must be listed in the license application. See the Directorate of Defense Trade Controls Internet Web site for instructions and limitations on attaching documentation;

(3) Certification by an empowered official must accompany all application submissions (*see* § 126.13 of this subchapter);

(4) An application for a license for the permanent export of defense articles sold commercially must be accompanied by purchase documentation (*e.g.,* purchase order, contract, letter of intent, or other appropriate documentation). In cases involving the Foreign Military Sales program, a copy of the relevant Letter of Offer and Acceptance is required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed;

(5) Form DSP–83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified defense articles or classified technical data (*see* §§ 123.10 and 125.3 of this subchapter); and

(6) A statement concerning the payment of political contributions, fees, and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (*see* part 130 of this subchapter).

* * * * *

■ 19. Section 123.9 is amended by revising paragraph (b) to read as follows:

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

* * * * *

(b) The exporter, U.S. or foreign, must inform the end-user and all consignees that the defense articles being exported are subject to U.S. export laws and regulations as follows:

(1) The exporter, U.S. or foreign, must incorporate the following statement as an integral part of the bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter: ''These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption.''; and

(2) When exporting items subject to the EAR (*see* §§ 120.42 and 123.1(b)) on a Department of State license or other approval, the U.S. exporter must provide to the end-user and consignees in the purchase documentation or other support documentation the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List ''(x)'' paragraph. This includes the appropriate ECCN or EAR99 designation.

* * * * *

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2013–08351 Filed 4–15–13; 8:45 am]

BILLING CODE 4710–25–P

FEDERAL REGISTER

Vol. 78 Tuesday,
No. 73 April 16, 2013

Part IV

The President

Federal Register
Vol. 78, No. 73
Tuesday, April 16, 2013

Presidential Documents

Title 3—

The President

Memorandum of April 5, 2013

Delegation of Functions Under Sections 404 and 406 of Public Law 112–208

Memorandum for the Secretary of State [and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate the functions conferred upon the President by sections 404 and 406 of Public Law 112–208 as follows:

I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities set forth in:

- subsections 404(a), 404(b), and 404(d), with respect to the determinations provided for therein;
- subsection 404(c)(3);
- subsection 404(c)(4), consistent with subsection 404(f); and
- subsection 406(a)(1).

I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities set forth in:

- subsections 404(a), 404(b), and 404(d), with respect to the submission of the list, updates, and reports described in those respective subsections;
- subsection 404(e); and subsections 404(c)(2) and 406(a)(2).

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, April 5, 2013

[FR Doc. 2013–09104
Filed 4–15–13; 11:15 am]
Billing code 4710–10

Presidential Documents

Presidential Determination No. 2013–07 of April 8, 2013

Presidential Determination on Eligibility of the Federal Republic of Somalia To Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Federal Republic of Somalia will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination, and attached memorandum of justification, to the Congress and to arrange for the publication of this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, April 8, 2013

[FR Doc. 2013–09106
Filed 4–15–13; 11:15 am]
Billing code 4710–10

Reader Aids

Federal Register

Vol. 78, No. 73

Tuesday, April 16, 2013

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

770.....22660
772.....22660
774.....22660

16 CFR

Proposed Rules:
1112.....20511
1226.....20511

17 CFR

1.....21045, 22418
3.....20788, 22418
5.....22418
9.....22418
11.....22418
23.....20788, 21045
31.....22418
40.....22418
41.....22418
50.....21750
140.....21522, 22418
145.....22418
170.....22418
171.....22418
190.....22418
240.....21046
249.....21046

Proposed Rules:
23.....20848

18 CFR

154.....19409
376.....21245

19 CFR

351.....21246

20 CFR

Proposed Rules:
638.....19632
670.....19632

21 CFR

73.....19413
510.....19986, 21058
520.....21058
522.....19986, 21058
524.....21058
526.....21058
529.....21058
558.....19986, 21058
600.....19585
1308.....21818

Proposed Rules:
Ch. I.....21085
107.....22442
876.....20268
882.....20268
892.....20268
1308.....21858

22 CFR

120.....21523, 22740
121.....22740
123.....22740
126.....21523

23 CFR

Proposed Rules:
771.....20074

25 CFR

518.....20236
558.....21826
581.....21060
584.....21060
585.....21060

Proposed Rules:
170.....21861

26 CFR

Proposed Rules:
1.....19950, 20523
53.....20523

27 CFR

Proposed Rules:
9.....20544

28 CFR

Proposed Rules:
0.....21862

29 CFR

4022.....22192

Proposed Rules:
15.....19632
4000.....20039
4001.....20039
4043.....20039
4204.....20039
4206.....20039
4231.....20039

30 CFR

250.....20423
1206.....20244

Proposed Rules:
701.....20394, 22451
736.....20394, 22451
737.....20394, 22451
738.....20394, 22451
750.....20394, 22451

32 CFR

103.....20443
105.....21716
182.....21826
226.....21256
706.....22421

33 CFR

100.....21258, 22193
117.....19415, 19585, 20451, 21063, 21064, 21537, 21839, 22423
165.....19988, 20454, 20792, 21260, 22195

Proposed Rules:
100.....19632, 20066, 20277, 20849, 21864
101.....20289, 20558, 22218
104.....20289, 20558, 22218
105.....20289, 20558, 22218
106.....20289, 20558, 22218
165.....19431, 20277, 20559, 20852

34 CFR

Proposed Rules:
Ch. II.....22452
Ch. III.....20069
Ch. VI.....22467

36 CFR

Proposed Rules:
7.....22470
1280.....20563

37 CFR

1.....19416, 20180
2.....20180
7.....20180
10.....20180
11.....20180
41.....20180

Proposed Rules:
1.....21788
3.....21788

38 CFR

17.....19586
59.....21262

Proposed Rules:
17.....22219

39 CFR

Proposed Rules:
3010.....22490

40 CFR

52.....19421, 19596, 19599, 19602, 19990, 19991, 19994, 19998, 20001, 20244, 20793, 21065, 21537, 21540, 21542, 21545, 21547, 21841, 22197, 22198, 22423
62.....21846
63.....20246
70.....19602
81.....20001, 21547, 22425
82.....20004
98.....19605
131.....20252
180.....20029, 20032, 20461, 21267
239.....20035
258.....20035

Proposed Rules:
52.....19434, 19636, 20290, 20855, 20856, 20868, 21281, 21296, 21302, 21580, 21581, 21582, 21583, 21867
60.....22126
62.....21871
63.....22370
70.....19636
80.....20881
81.....20856, 20868, 21583, 22501
82.....21871
98.....19802
239.....20073
258.....20073
450.....19434

42 CFR

68.....20466
433.....19918

Proposed Rules:
411.....21308
488.....20564
489.....20564
1001.....21314

44 CFR

67.....22221, 22222

Proposed Rules:
67.....22221, 22222

45 CFR

60.....20473
61.....20473

Proposed Rules:
155.....20581
1184.....22501

47 CFR

1.....19424, 21555
2.....21555
20.....21555
22.....19424, 21555
24.....19424, 21555
27.....19424, 21555
54.....20796, 22198
73.....21565, 21849
76.....20255
90.....19424, 21555

Proposed Rules:
Ch. I.....21879
15.....21320
20.....19442
64.....21891
73.....21337

48 CFR

215.....21850
235.....21850
237.....21850

49 CFR

571.....21850

Proposed Rules:
575.....20597
622.....20074

50 CFR

17.....22626
217.....20800
635.....20258
648.....20037, 20260, 21071
679.....20037

Proposed Rules:
17.....20074, 21086, 22506
20.....21200
216.....20604
218.....22096
223.....20718
224.....20718
600.....20291
622.....20292, 20496
635.....21584

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 933/P.L. 113–6
Consolidated and Further Continuing Appropriations Act, 2013 (Mar. 26, 2013; 127 Stat. 198)
Last List March 15, 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.