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WHEN: Tuesday, June 11, 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

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30904; Amdt. No. 507]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, June 27, 2013.

FOR FURTHER INFORMATION CONTACT: Rick Dunham, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail ADDRESSES: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on May 24, 2013.

John M. Allen,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 27, 2013.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

Revisions to IFR Altitudes & Changeover Points Amendment 507 Effective Date June 27, 2013

From	To	MEA
§ 95.1001 DIRECT ROUTES—U.S. COLOR ROUTES		
§ 95.10 Amber Federal Airway A1 Is Amended To Read in Part		
Takotna River, AK NDB *6000–MOCA.	North River, AK NDB	*7000

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3266 RNAV Route T266 Is Amended by Adding			
Radky, AK FIX	Xadzy, AK FIX	7000	17500
Xadzy, AK FIX	Vulho, AK FIX	6000	17500
Vulho, AK FIX	Fogid, AK FIX	5200	17500
Fogid, AK FIX	Yicax, AK FIX	4500	17500
Yicax, AK FIX	Neree, AK FIX	5000	17500
Neree, AK FIX	Vazpu, AK FIX	5100	17500
Vazpu, AK FIX	Doozi, AK FIX	6200	17500
Doozi, AK FIX	Annette Island, AK VOR/DME	5400	17500
Is Amended To Delete			
Coghlan Island, AK NDB	Fredericks Point, AK NDB	6500	17500
Fredericks Point, AK NDB	Annette Island, AK VOR/DME	6200	17500
§ 95.3302 RNAV Route T302 Is Added To Read			
Cukis, OR FIX	Jjace, OR FIX	7000	17500
Jjace, OR FIX	Jjett, OR FIX	8000	17500
Jjett, OR FIX	Jermm, OR FIX	8000	17500
Jermm, OR FIX	Cupri, OR FIX	*7000	17500
*5500–MOCA.			
§ 95.3304 RNAV Route T304 Is Added To Read			
Glara, OR FIX	Putzz, OR FIX	7500	17500
Putzz, OR FIX	Jjett, OR FIX	8000	17500
Jjett, OR FIX	Wissl, OR FIX	8000	17500
Wissl, OR FIX	Herbs, OR FIX	*7000	17500
*6000–MOCA.			

From	To	MEA
§ 95.6001 VICTOR ROUTES—U.S.		
§ 95.6003 VOR Federal Airway V3 Is Amended To Read in Part		
Modena, PA VORTAC	Biggy, NJ FIX	2500
§ 95.6010 VOR Federal Airway V10 Is Amended To Read in Part		
Revloc, PA VOR/DME	Juney, PA FIX	*5000 MAA–12000
*5000–GNSS MEA.		
§ 95.6066 VOR Federal Airway V66 Is Amended To Read in Part		
Bypas, TX FIX	*Hyman, TX FIX	**6000
*5000–MRA. **4400–MOCA.		
§ 95.6133 VOR Federal Airway V133 Is Amended To Read in Part		
Detroit, MI VOR/DME	Salem, MI VORTAC	2900
§ 95.6419 VOR Federal Airway V419 Is Amended To Read in Part		
Modena, PA VORTAC	Biggy, NJ FIX	2500
§ 95.6536 VOR Federal Airway V536 Is Amended To Read in Part		
Pendleton, OR VORTAC	Walla Walla, WA VOR/DME	4100
§ 95.6595 VOR Federal Airway V595 Is Amended To Read in Part		
Drack, OR FIX	*Deschutes, OR VORTAC. NE BND SW BND	 6200 10500
*7900–MCA Deschutes, OR VORTAC, SW BND.		
Is Amended To Delete		
Deschutes, OR VORATC	Jayte, OR FIX. NW BND SE BND	 12600 9000

From	To	MEA
Jayte, OR FIX	Jefsn, OR FIX	12600
Jefsn, OR FIX	*Harzl, OR FIX.	
	NW BND	8000
	SE BND	12600
*9300–MCA HARZL, OR FIX, SE BND.		
Harzl, OR FIX	*Portland, OR VOR/DME	7000
*5500–MCA Portland, OR VOR/DME, SE BND.		

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7075 Jet Route J75 Is Amended To Read in Part			
Modena, PA VORTAC	Solberg, NJ VOR/DME	18000	23000

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V140 Is Amended To Add Changeover Point			
Panhandle, TX VORTAC	Sayre, OK VORTAC	42	Panhandle
V298 Is Amended To Add Changeover Point			
Dubois, ID VORTAC	Dunoir, WY VOR/DME	68	Dubois
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Modena, PA VORTAC	Solberg, NJ VOR/DME	10	Modena
V419 Is Amended To Add Changeover Point			
Modena, PA VORTAC	Solberg, NJ VOR/DME	10	Modena
V444 Is Amended To Modify Changeover Point			
Baker City, OR VOR/DME	Boise, ID VORTAC	25	Baker City
V60 Is Amended To Delete Changeover Point			
Albuquerque, NM VORTAC	Otto, NM VOR	23	ALbuquerque
§ 95.8005 Jet Routes Changeover Points Airway Segment J75 Is Amended To Add Changeover Point			
Modena, PA VORTAC	Solberg, NJ VOR/DME	10	MODENA

[FR Doc. 2013–13032 Filed 5–31–13; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 130521487–3487–01]

RIN 0694–AF92

Addition, Removals, and Revisions to the List of Validated End-Users in the People's Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to improve the display and readability of the list of Validated End-Users (VEU) and their respective eligible items and destinations; revise the existing VEU listing for the People's Republic of China (PRC) to add one end-user, Shanghai Huahong Grace Semiconductor Manufacturing Corporation, Ltd. (HHGrace); remove two end-users, Grace Semiconductor Manufacturing Corporation (GSMC) and Shanghai Huahong NEC Electronics Company, Ltd. (HHNEC); and update the list of eligible items for CSMC Technologies Corporation (CSMC). Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to remove GSMC and HHNEC as a result of the merger of the two companies to create HHGrace, which is being added as a VEU. With this rule, exports, reexports and transfers (in-country) of certain items to three facilities of HHGrace are now authorized under Authorization VEU. In addition, BIS is updating CSMC's list of eligible items in Supplement No. 7 to part 748. These actions are not being taken in response to activities of concern. Rather, the actions are being taken at the companies' request.

DATES: This rule is effective June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230; by telephone: (202) 482–5991, fax: (202) 482–3991, or email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may

be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the date they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the EAR. Under the terms described in that supplement, VEUs may obtain eligible items without an export license from BIS, in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs, but may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646) to create Authorization VEU.

Addition and Removals on the List of Validated End-User Authorizations in the PRC

Addition of Shanghai Huahong Grace Semiconductor Manufacturing Corporation, Ltd. to the list of Validated End-Users in the PRC and its ''Eligible Destinations'' and ''Eligible Items (By ECCN)''

This final rule amends Supplement No. 7 to part 748 of the EAR to add Shanghai Huahong Grace Semiconductor Manufacturing Corporation, Ltd. (HHGrace) as a VEU, and to identify its eligible facilities and the items that may be exported, reexported or transferred (in-country) to HHGrace under Authorization VEU. The names and addresses of this newly-appointed VEU and its eligible end-users are as follows:

New Validated End-User

Shanghai Huahong Grace Semiconductor Manufacturing Corporation, Ltd.

Eligible Destinations

Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 2, 668 Guoshoujing Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China.

Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 1, 1188 Chuanqiao Road, Pudong, Shanghai 201206 China.

Shanghai Huahong Grace Semiconductor Manufacturing Corporation—GFab1, 1399 Zuchongzhi Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China.

Eligible Items That May Be Exported, Reexported or Transferred (in-country) to the Three Eligible Destinations Identified Under HHGrace's Validated End-User Authorization:

Eligible Items (By ECCN): 1C350.c.3, 1C350.d.7, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.4, 3B001.a.1, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 5B002, and 5E002 (limited to production technology for integrated circuits controlled by ECCNs 5A002 or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) and 742.15 of the EAR).

Removal of Validated End-User Authorizations for Grace Semiconductor Manufacturing Corporation and Shanghai Huahong NEC Electronics Company, Ltd.

As a result of the merger of HHNEC and GSMC, and their dissolution as independent legal entities, and consistent with Section 748.15 of the EAR, BIS now amends Supplement No. 7 to part 748 of the EAR to remove GSMC and HHNEC as VEUs. Both entities' addresses will also be removed from Supplement No. 7 to part 748 of the EAR. As a result of this rule, neither GSMC nor HHNEC will be authorized to receive items through Authorization VEU. This amendment is not the result of activities of concern. Rather, as noted above, the removal of GSMC's and HHNEC's qualifications as VEUs is the result of the merger of the two companies and their corresponding dissolution as independent legal entities.

Revisions to an Existing Validated End-User Authorization in the PRC

Revisions to the List of Eligible Items for CSMC Technologies Corporation

In this rule, BIS amends Supplement No. 7 to part 748 of the EAR to amend CSMC Technologies Corporation's (CSMC) current list of eligible items. Specifically, BIS removes Export Control Classification Numbers (ECCNs) 3B001.c.1.a and 3B001.c.2.a from CSMC's list of eligible items that may be exported, reexported or transferred (in-country) to the company's eligible destinations. BIS is not making this change in response to activities of concern. Rather, BIS is making this change to reflect changes made to the Commerce Control List in a rule published on September 7, 2010 (75 FR 54271). That rule revised the control parameters for the anisotropic plasma dry etching equipment controlled under ECCN 3B001.c to align with changes made to the Wassenaar Arrangement's List of Dual-Use Goods and Technologies, as maintained and agreed to by the governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. BIS's September 2010 change to the CCL removed ECCNs 3B001.c.1.a and 3B001.c.2.a, and changed the classification of those items to EAR99. As EAR99 items do not generally require a license for export, reexport or transfer (in-country) to the PRC, these items should no longer be included under CSMC's list of eligible items.

Former List of Eligible Items:

1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.c.1.a, 3B001.c.2.a, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.

New List of Eligible Items:

1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.

Modification of the Structure of Supplement No. 7 to Part 748

Finally, in this rule, BIS amends Supplement No. 7 to part 748 to modify its structure. BIS is modifying the Supplement to improve the display and readability of the list of VEUs and their respective eligible items and destinations.

The changes described in this rule are expected to further facilitate exports to civilian end-users in the PRC, and are expected to result in significant savings of time and resources for the VEU and its eligible facilities. Authorization VEU eliminates the burden on exporters and reexporters of preparing individual license applications, as exports, reexports and transfers (in-country) of the specified eligible items may now be made under general authorization instead of under individual licenses. With the addition of HHGrace as a VEU, exporters and reexporters can supply HHGrace much more quickly, thus

enhancing the competitiveness of both the VEU and its suppliers of U.S-origin items.

To ensure appropriate facilitation of exports and reexports, on-site reviews of VEUs, including HHGrace, may be warranted pursuant to Section 748.15(f)(2) of the EAR and Section 7(iv) of Supplement No. 8 to part 748 of the EAR. If such a review is warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and 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 most recently by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS merely updates the list of VEUs and their respective eligible items and destinations. These changes have been made within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency End-User Review Committee reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register.** BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending a VEU authorization by updating the ''eligible items'' of the named end-user, removing two currently authorized VEUs, and replacing those VEUs with the addition of a new end-user—the new company resulting from the merger of two existing VEUs. Delaying this action's effectiveness could cause confusion with the VEU status of the list of companies identified in this rule due to the changes made to that list. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

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

Dated: May 24, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration

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Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR 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).

■ 2. Revise Supplement No. 7 to part 748 to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal register citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
China (People's Republic of).	Advanced Micro Devices China, Inc.	3D002, 3D003, 3E001 (limited to "technology" for items classified under 3C002 and 3C004 and "technology" for use during the International Technology Roadmap for Semiconductors (ITRS) process for items classified under ECCNs 3B001 and 3B002), 3E002 (limited to "technology" for use during the ITRS process for items classified under ECCNs 3B001 and 3B002), 3E003.e (limited to the "development" and "production" of integrated circuits for commercial applications), 4D001, 4D002 and 4E001 (limited to the "development" of products under ECCN 4A003).	AMD Technologies (China) Co., Ltd., No. 88, Su Tong Road, Suzhou, China 215021. Advanced Micro Devices (Shanghai) Co., Ltd., Buildings 46, 47, 48 & 49, River Front Harbor, Zhangjiang Hi-Tech Park, 1387 Zhangdong Rd., Pudong, Shanghai, China 201203. AMD Technology Development (Beijing) Co., Ltd., North and South Buildings, RaycomInfotech, Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190. AMD Products (China) Co. Ltd., North and South Buildings, RaycomInfotech Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190.	75 FR 25763, 5/10/10. 76 FR 2802, 1/18/11. 78 FR 3319, 1/16/13.
	Applied Materials (China), Inc.	*These Items Authorized for those Applied Materials Destinations Identified by one asterisk (*):* 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001).	* Applied Materials South East Asia Pte. Ltd., Shanghai Depot, c/o Shanghai Applied Materials Technical Service Center, No. 2667, Zuchongzhi Road, Shanghai, China 201203. * Applied Materials South East Asia Pte. Ltd., Beijing Depot, c/o Beijing Applied Materials Technical Service Center, No. 1 North Di Sheng Street, BDA, Beijing, China 100176. *Applied Materials South East Asia Pte. Ltd., Wuxi Depot, c/o Sinotrans Jiangsu Fuchang Logistics Co., Ltd., 1 Xi Qin Road, Wuxi Export Processing Zone, Wuxi, Jiangsu, China 214028. Applied Materials South East Asia Pte. Ltd., Wuhan Depot, c/o Wuhan Optics Valley Import & Export Co., Ltd., No. 101 Guanggu Road, East Lake High-Tec Development Zone, Wuhan, Hubei, China 430074. Applied Materials (China), Inc., Shanghai Depot, No. 2667, Zuchongzhi Road, Shanghai, China 201203. * Applied Materials (China), Inc., Beijing Depot, No. 1 North Di Sheng Street, BDA, Beijing, China 100176.	72 FR 59164, 10/19/07. 74 FR 19382, 4/29/09. 75 FR 27185, 5/14/10. 77 FR 10953, 2/24/12.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal register citation
		These Items Authorized for the Applied Materials Destination Identified by two asterisks (**): 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by ECCN 3B001).	** Applied Materials (Xi'an) Ltd., No. 28 Xin Xi Ave., Xi'an High Tech Park, Export Processing Zone, Xi'an, Shaanxi, China 710075.	
	Boeing Tianjin Composites Co. Ltd.	1B001.f, 1D001 (limited to ''software'' specially designed or modified for the ''use'' of equipment controlled by 1B001.f), 2B001.b.2 (limited to machine tools with accuracies no better than (*i.e.,* not less than) 13 microns), 2D001 (limited to ''software,'' other than that controlled by 2D002, specially designed or modified for the ''use'' of equipment controlled by 2B001.b.2), and 2D002 (limited to ''software'' for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a ''numerical control'' unit, capable of coordinating simultaneously more than 4 axes for ''contouring control'' controlled by 2B001.b.2).	Boeing Tianjin Composites Co. Ltd., No. 4–388 Heibei Road, Tanggu Tianjin, China.	72 FR 59164, 10/19/07. 74 FR 19382, 4/29/09. 77FR 10953, 2/24/12. 77 FR 40258, 7/9/12.
	CSMC Technologies Corporation.	1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.e. 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.	CSMC Technologies Fab 1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China. CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Rd. Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214028, China.	76 FR 2802, 1/18/11. 76 FR 37634, 6/28/11. 77 FR 10953, 2/24/12. 78 FR 23472, 4/19/13. 78 FR [INSERT PAGE NUMBER], 6/3/13.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal register citation
	Lam Research Corporation	*These Items Authorized for those Lam's Destinations Identified by a single asterisk (*):* 2B230, 2B350.c, 2B350.d, 2B350.g, 2B350.h, 2B350.i, 3B001.c and 3B001.e (items classified under ECCNs 3B001.c and 3B001.e are limited to specially designed components and accessories), 3D001 (limited to ''software'' (excluding source code) specially designed for the ''development'' or ''production'' of equipment controlled by ECCN 3B001), 3D002 (limited to ''software'' (excluding source code) specially designed for the ''use'' of equipment controlled by ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' of equipment controlled by ECCN 3B001).	* Lam Research International Sarl (Lam Shanghai Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 3869, Longdong Avenue, Pudong New District, Shanghai, China 201203. *Lam Research International Sarl (Lam Shanghai Warehouse; WGQ Bonded Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 55, Fei la Road, Waigaoqiao Free Trade Zone, Pudong New Area, Shanghai, China 200131. * Lam Research International Sarl (Lam Beijing Warehouse), c/o Beijing Lam Electronics Tech Center, No. 8 Building, No. 1, Disheng North Street, Beijing Economic & Technological Development Area, Beijing, China 100176. * Lam Research International Sarl (Wuxi EPZ Bonded Warehouse), c/o HMG WHL Logistic (Wuxi) Co., Ltd., 1st Fl, Area 4, No. 1, Plot J3, No. 5 Gaolang East Road, Export Processing Zone, Wuxi, China 214028. * Lam Research International Sarl (Lam Beijing Warehouse), c/o HMG Hi-tech Logistics (Beijing) Co., Ltd., Building 3, No. 9 Ke Chuang Er Street, Beijing Economic Technological Development Area, Beijing, China 100176. * Lam Research International Sarl (Wuhan TSS), c/o HMG Wuhan Logistic Co., Ltd., 1st–2nd Floor, Area B, No. 5 Building, Hua Shi Yuan Er Road, Eastlake Hi-Tech Development Zone, Wuhan, Hubei Province, China 430223.	75 FR 62462, 10/12/10. 77 FR 10953, 2/24/12. 78 FR 3319, 1/16/13.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal register citation
		These Items Authorized for those Lam's Destinations Identified by two asterisks (**):. 2B230, 2B350.c, 2B350.d, 2B350.g, 2B350.h, 2B350.i, 3B001.c and 3B001.e (items classified under ECCNs 3B001.c and 3B001.e are limited to specially designed components and accessories), 3D001 (limited to ''software'' (excluding source code) specially designed for the ''development'' or ''production'' of equipment controlled by ECCN 3B001), 3D002 (limited to ''software'' (excluding source code) specially designed for the ''use'' of equipment controlled by ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' (limited to those stages that support integration, assembly (mounting), inspection, testing, and quality assurance) of equipment controlled by ECCN 3B001).	**Lam Research Service Co., Ltd., 1st Floor, Area C, Hua Hong Science & Technology Park, 177 Bi Bo Road, Zhangjiang Hi-Tech Park, Pudong, Shanghai, China 201203. **Lam Research (Shanghai) Co., Ltd., No. 1 Jilong Rd., Room 424–2, Waigaoqiao Free Trade Zone, Shanghai, China 200131. **Lam Research Service Co., Ltd. (Beijing Branch), Rm 1010, Zhaolin Building, No. 15 Rong Hua Zhong Road, Beijing Economic & Technological Development Area, Beijing, China 100176. **Lam Research Service Co., Ltd., Wuxi Representative Office, Room 302, Building 6, Singapore International Park, No. 89 Xing Chuang Si Road, Wuxi New District, Wuxi, Jiangsu, China 214028. **Lam Research Service Co., Ltd., Wuhan Representative Office, Room 302, Guanggu Software Park Building E4, No. 1 Guanshan Road, Donghu Development Zone, Wuhan, Hubei Province, China 430074. **Lam Research Semiconductor (Suzhou) Co., Ltd. (Suzhou), A Division of Lam Research International Sarl, A–2 Building, Export Processing Zone, Suzhou New District, Jiangsu Province, China 215151.	
Semiconductor Manufacturing International Corporation.	1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3C004, 5B002, and 5E002 (limited to ''technology'' according to the General Technology Note for the ''production'' of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of section 742.15 of the EAR).	Semiconductor Manufacturing International (Shanghai) Corporation, 18 Zhang Jiang Rd., Pudong New Area, Shanghai, China 201203. Semiconductor Manufacturing International (Tianjin) Corporation, 19 Xing Hua Avenue, Xi Qing Economic Development Area, Tianjin, China 300385. Semiconductor Manufacturing International (Beijing) Corporation, No. 18 Wen Chang Road, Beijing Economic-Technological Development Area, Beijing, China 100176.	72 FR 59164, 10/19/07. 75 FR 67029, 11/1/10. 77 FR 10953, 2/24/12.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal register citation
	Shanghai Huahong Grace Semiconductor Manufacturing Corporation.	1C350.c.3, 1C350.d.7, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.4, 3B001.a.1, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 5B002, and 5E002 (limited to production technology for integrated circuits controlled by ECCNs 5A002 or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) and 742.15 of the EAR).	Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 2, 668 Guoshoujing Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China. Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 1, 1188 Chuanqiao Road, Pudong, Shanghai 201206 China. Shanghai Huahong Grace Semiconductor Manufacturing Corporation—GFab1, 1399 Zuchongzhi Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China.	78 FR [INSERT PAGE NUMBER], 6/3/13.
	SK hynix Semiconductor (China) Ltd.	3B001.a, 3B001.b, 3B001.c, 3B001.e, and 3B001.f.	SK hynix Semiconductor (China) Ltd., Lot K7/K7–1, Export Processing Zone, Wuxi, Jiangsu, China 214028.	75 FR 62462, 10/12/10. 77 FR 40258, 7/9/12. 78 FR 3319, 1/16/13.
	SK hynix Semiconductor (Wuxi) Ltd.	3B001.a, 3B001.b, 3B001.c, 3B001.e, and 3B001.f.	SK hynix Semiconductor (Wuxi) Ltd., Lot K7/K7–1, Export Processing Zone, Wuxi, Jiangsu, China 214028.	75 FR 62462, 10/12/10. 77 FR 40258, 7/9/12. 78 FR 3319, 1/16/13.
India	GE India Industrial Pvt Ltd..	1C002.a.1, 1C002.a.2, 1C002.b.1.a, 1C002.b.1.b, 1E001, 2E003.f, 9E003.a.1, 9E003.a.2, 9E003.a.4, 9E003.a.5, 9E003.a.6, 9E003.a.8, and 9E003.c.	GE India Technology Centre Private Limited (GEITC), No. 122, EPIP, Phase II, Hoodi Village, Whitefield Road, Bangalore 560066, Karnataka, India. Bangalore Engineering Center (BEC), c/o GE India Technology Centre Private Limited (GEITC), No. 122, EPIP, Phase II, Hoodi Village, Whitefield Road, Bangalore 560066, Karnataka, India.	74 FR 31620, 7/2/09. 74 FR 68147, 12/23/09. 77 FR 10953, 2/24/12.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AD09

Core Principles and Other Requirements for Designated Contract Markets; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the **Federal Register** release of the final rule regarding Core Principles and Other Requirements for Designated Contract Markets by inserting a missing instruction to add Appendix C to 17 CFR part 38. This is a correction to the **Federal Register** only, which does not affect the text of Appendix C as published in the final rule.

DATES: This correction is effective May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, Deputy Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; 202–418–5964; *CKirkpatrick@cftc.gov.*

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission is correcting amendatory language for the previously published **Federal Register** release of the final rule regarding Core Principles and Other Requirements for Designated Contract Markets (77 FR 36612, June 19, 2012). The final rule, as published in the **Federal Register**, included an Appendix C to 17 CFR part 38, ''Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation.'' However, the instruction to add that appendix to the Code of Federal Regulations was inadvertently omitted from the **Federal Register** publication of the final rule. Therefore, on page 36722, at the top of the first column, immediately before the heading, ''Appendix C—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation,'' insert the following amendatory instruction:

* * * * *

■ 20. Add appendix C to part 38 to read as follows:

* * * * *

Dated: May 29, 2013.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–13045 Filed 5–29–13; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 8345]

RIN 1400–AC86

Visas: Documentation of Immigrants under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the Department of State's regulations relating to adoptions in countries party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption to include a new adoption provision from the International Adoption Simplification Act. The legislation provides for sibling adoption to include certain children who are under the age of 18 at the time the petition for immediate relative is filed on their behalf, and also certain children who attained the age of 18 on or after April 1, 2008 and who are the beneficiaries of a petition filed on or before November 30, 2012.

DATES: This rule iseffective June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Taylor W. Beaumont, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 2401 E Street NW., Room L–603D, Washington, DC 20520–0106, (202) 663–2951, email (*BeaumontTW@state.gov*).

SUPPLEMENTARY INFORMATION:

Background

As used in this public notice, the term ''Convention'' means The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the term ''Convention country'' means a country that is a party to the Convention and with which the Convention is in force for the United States; and the term ''IASA'' means the International Adoption Simplification Act, Public Law 111–287 (2010).

On November 30, 2010, the President signed the IASA, modifying the Immigration and Nationality Act (INA) regarding adoptions from Convention countries. Among other changes, the IASA creates a new section in INA section 101(b)(1)(G)(iii) under which U.S. citizens may file an immediate relative petition for a child younger than 18 from a Convention country, provided that the child is the natural sibling of a child concurrently or already adopted or being brought to the United States for adoption under INA section 101(b)(1)(E)(i), (F)(i), or (G)(i). To be eligible under INA section 101(b)(1)(G)(iii), a child must be adopted abroad, or be coming to the United States for adoption, by the adoptive parent(s) or prospective adoptive parent(s) of his/her natural sibling. In addition, the child must be otherwise qualified as a Convention adoptee under INA section 101(b)(1)(G)(i), except that the child is under 18 years of age rather than under 16 years of age (which would be required for classification under INA section 101(b)(1)(G)(i)).

The IASA also contains an exception at section 4(b) that necessitates a revision of the Department regulation published in 22 CFR 42.24. Under that section, an alien older than 18 years of age nonetheless may be classified as a child under INA section 101(b)(1)(G)(iii) if he or she turned 18 years of age on or after April 1, 2008 and his or her immediate relative petition is filed no later than November 30, 2012. As currently written, the Department's regulations pertaining to INA section 101(b)(1)(G) exclusively cover those children whose adoptions will be governed by the Convention. Although aliens qualified under section 4(b) of the IASA will be emigrating from a Convention country, the Convention only governs the adoption of children under the age of 18. This rule is necessary to change Department regulations to cover aliens properly qualified under section 4(b) of the IASA.

Discussion of Comments on the Proposed Rule

The Department of State published an interim final rule on November 1, 2011, with a 30-day comment period that expired on December 1, 2011 (76 FR 67361). In response, the Department received one comment relative to the proposed rule that supported the changes proposed in this rulemaking as an effort to reunite siblings and families that may be separated as a result of intercountry adoptions.

Summary of the Final Regulation

This final rule establishes new procedures that consular officers will follow in allowing U.S. parents to file an immediate relative petition for a child who is younger than 18 years of age (or who attained the age of 18 on or after April 1, 2008 if the petition is filed for such child on or before November 30, 2012) who is the natural sibling of a child already adopted by the same U.S. citizen parent. The Department published an interim final rule on November 1, 2011 and, after reviewing the comment, is issuing the rule as final with one change that clarifies which foreign government authority may be considered as the ''competent authority'' in IASA adoptions for purposes of INA section 101(b)(1)(G)(i)(V)(aa).

Regulatory Findings

A. Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 553), the Department published a proposed rule and invited public comment.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

Consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule regulates individual aliens who seek immigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule would not result in any such expenditure, nor would it significantly or uniquely affect small governments.

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule would 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 on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866.

Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

F. Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

G. Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

H. Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

I. 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 requirements of Executive Order 13175 does not apply to this rulemaking.

J. Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Foreign officials, Immigration, Passports and visas.

Accordingly, for the reasons set forth in the preamble, the interim rule published November 1, 2011, at 76 FR 67363, is adopted as final with the following change:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for section 42 is amended to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279; The International Adoption Simplification Act, Pub. L. 111–287; 8 U.S.C. 1101, 124 Stat. 3058.

■ 2. Section 42.24 is amended by revising paragraph (n)(2) to read as follows:

§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

* * * * *

(n) * * *

(2) For any alien described in paragraph (n)(1) of this section, the ''competent authority'' referred to in INA section 101(b)(1)(G)(i)(V)(aa) is a court or governmental agency of a foreign country of origin having jurisdiction and authority to make decisions in matters of child welfare, including adoption. If the competent authority over matters of child welfare no longer has jurisdiction or authority over the alien due to his or her age, then the passport issuing authority of the country of origin may be considered the competent authority for the purposes of INA section 101(b)(1)(G)(i)(V)(aa).

Dated: May 2, 2013.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2013–13065 Filed 5–31–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0551]

Special Local Regulation and Safety Zone; America's Cup Sailing Events, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; notice of calendar availability.

SUMMARY: The Coast Guard announces the availability of the 2013 program calendar for the on-water activities associated with the ''Louis Vuitton Cup, Red Bull Youth America's Cup and the 34th America's Cup'' regatta scheduled from July 4th to September 23rd, 2013 on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island.

DATES: Effective June 3, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0551 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0551 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Commander Aaron Lubrano, Coast Guard Sector San Francisco, U.S. Coast Guard; telephone (415) 399–3446, email *Aaron.C.Lubrano@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard, on July 17, 2012, published a special local regulation and a safety zone for the sailing regattas being conducted on the waters of San Francisco Bay associated with the 34th America's Cup sailing events taking place adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. (77 FR 41902) The special local regulation and safety zone regulate the on-water activities associated with the ''Louis Vuitton Cup, Red Bull Youth America's Cup and the 34th America's Cup'' regatta scheduled for July 4th to September 23rd, 2013, which will temporarily restrict vessel traffic in a portion of the San Francisco Bay, prohibit vessels not participating in the America's Cup sailing events from entering the designated race area, and create a temporary safety zone around racing vessels.

This document announces the availability of the 2013 program calendar referenced in the rulemaking published in association with the ''Louis Vuitton Cup, Red Bull Youth America's Cup and the 34th America's Cup'' regattas. This program lists the scheduled race dates that the rule will be enforced for the event programming.

This document is issued under the authority of 5 U.S.C. 552(a), 33 U.S.C. 1233, and 33 CFR 1.05–1.

Dated: May 7, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–12998 Filed 5–31–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2327–CN]

RIN 0938–AR38

Medicaid Program; Increased Federal Medical Assistance Percentage Changes Under the Affordable Care Act of 2010; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the final rule published in the April 2, 2013 **Federal Register** entitled ''Medicaid Program; Increased Federal Medical Assistance Percentage Changes Under the Affordable Care Act of 2010.''

DATES: Effective June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Annette Brewer, (410) 786–6580.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013–07599 of April 2, 2013 (78 FR 19918), there was a typographical error that is identified and corrected in the Correction of Error section below. The provision in this correction notice is effective as if it had been included in the document published April 2, 2013. Accordingly, the correction is effective on June 3, 2013.

II. Summary of Error

In the April 2, 2013, we inadvertently made a typographical error in the reference cited in the regulations text at § 433.206(h). The text currently states, ''§ 433.210(c)(6) of (c)(8),'' and it should be corrected to read, ''§ 433.210(c)(6) or (c)(8).''

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The correction notice corrects a typographical error, and does not warrant an additional notice and comment period or a delay in the effective date. The typographical error was clear and the meaning of the provision remained evident; so such procedures are unnecessary. Further, correction of the typographical error will serve the public interest by reducing any potential for confusion. Therefore, we find good cause to waive requirements for proposed rulemaking and the delayed effective date. Consequently, this correction will be effective on June 3, 2013.

IV. Correction of Error

In FR Doc. 2013–07599 of April 2, 2013 (78 FR 19918), make the following correction:

On page 19947, in the 1st column; in the 1st paragraph, on line 1, the reference ''§ 433.210(c)(6) of (c)(8),'' should be corrected to read, ''§ 433.210(c)(6) or (c)(8)''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 29, 2013.

Jennifer Cannistra,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2013–13151 Filed 5–31–13; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90; DA 13–1113]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a framework for the challenge process that will be used to finalize the list of areas that will be eligible for Connect America Phase II model-based support and adopts the procedures for a price cap carrier to elect to make a state-level commitment to serve the eligible areas.

DATES: Effective July 3, 2013, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418–0886 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 10–90; DA 13–1113, adopted on May 16, 2013, and released on May 16, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA–13–1113A1.pdf.*

I. Introduction

1. In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans. As part of the reform, the Commission adopted a framework for providing support to areas served by price cap carriers known as the Connect America Fund through ''a combination of competitive bidding and a new forward-looking model of the cost of constructing modern multi-purpose networks.'' In particular, the Commission will offer each price cap carrier monthly model-based support for a period of five years in exchange for a state-level commitment to serve specified areas that are not served by an unsubsidized competitor, and if that offer is not accepted, will determine support through a competitive process.

2. In this Report and Order (Order), the Wireline Competition Bureau (Bureau) adopts a framework for the challenge process that will be used to finalize the list of areas that will be eligible for Connect America Phase II model-based support and adopts the procedures for a price cap carrier to elect to make a state-level commitment

to serve the eligible areas. We particularly encourage state public utility commissions and broadband mapping authorities to participate in the challenge process and provide any information they believe to be relevant to our consideration of which census blocks should be eligible for the offer of Phase II model-based support.

II. Discussion

A. Phase II Footprint Challenge Process

3. The Phase II footprint challenge process will allow interested parties to provide input on the preliminary list of what areas should be deemed unserved by an unsubsidized competitor, and therefore eligible for Phase II model-based support. Section 54.5 of the Commission's rules defines an unsubsidized competitor as ''a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support.'' In this order, we set forth the basic framework regarding the use of presumptions, evidentiary showing, and timing of the challenge process for census blocks where Phase II funding will be offered to price cap carriers.

4. Consistent with the framework established in the *USF/ICC Transformation Order,* an unsubsidized competitor in areas where the price cap carrier will be offered model-based support must meet the speed criteria established by the Commission for fixed broadband service (i.e., a provider that offers 4 Mbps downstream/1 Mbps upstream service (4 Mbps/1 Mbps)), as well as non-speed broadband criteria (i.e., latency, capacity, and price) and provide voice service. In order to conduct the challenge process efficiently, we will develop the initial list of eligible census blocks based on coverage shown on the National Broadband Map, and the reporting of voice subscriptions on FCC Form 477, and then will conduct a challenge process that will provide an opportunity for parties to challenge that preliminary determination.

5. *Broadband Service.* Under the Commission's rules, an unsubsidized competitor must offer fixed broadband with speeds of at least 4 Mbps/1 Mbps. We will presume that the National Broadband Map is accurate with regard to the speed of services being offered by broadband providers, with that presumption subject to rebuttal. Because the National Broadband Map does not contain data specifically for the 4 Mbps/1 Mbps benchmark, we will use the National Broadband Map's 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps) advertised speed as a proxy for 4 Mbps/1 Mbps. After consideration of the record, we see no reason to depart, for purposes of Phase II implementation, from the 3 Mbps/768 kbps proxy generally recognized by Commission. Therefore, any terrestrial, fixed provider shown on the National Broadband Map as offering broadband with speeds of 3 Mbps/768 kbps will be presumed to provide broadband service meeting the speed requirement of 4 Mbps/1 Mbps.

6. While the National Broadband Map provides valuable information regarding the availability of broadband service meeting specified speed tiers, it does not address the other criteria that the Commission has indicated are relevant to determining whether an entity should be deemed an unsubsidized competitor. There is no alternative suitable national-level source that we can rely upon to make this determination. There is ample evidence in the record, however, that providers that meet the speed requirement generally meet our other performance criteria. For administrative ease, therefore, we conclude that it is reasonable to presume that providers that provide broadband of the required speed also meet the non-speed broadband criteria, with that presumption subject to rebuttal in particular instances.

7. It serves the public interest to presume existing providers that meet the speed criteria also meet the non-speed criteria for broadband service. This presumption places price cap carriers in the position of contesting a preliminary decision to not provide funding to a particular census block, rather than requiring unsubsidized competitors to contest a decision to fund a census block. This is both equitable and efficient. First, requiring price cap carriers to file a challenge likely will reduce the overall burden on respondents and the Commission while placing the burden on the party potentially receiving funds. Second, we conclude this presumption is generally accurate in the majority of cases. The preliminary classification of a block as served will serve to err on the side of not providing funding, while still giving the opportunity for the price cap carrier to demonstrate that a block should be funded.

8. *Voice Service.* Under the Commission's rules, an entity must provide ''residential terrestrial fixed voice *and* broadband service'' in order to be deemed an unsubsidized competitor. We conclude that the ability of the consumer to obtain voice service from a third party is not sufficient for that broadband provider to be deemed an unsubsidized competitor for purposes of Phase II implementation because that broadband provider would not be offering a voice service. Such an interpretation would effectively read the requirement that the unsubsidized competitor be a ''provider'' of ''voice'' out of the Commission's adopted definition, as all broadband connections offer the capability to receive an ''over the top'' voice over Internet protocol (VoIP) service from a third party. Therefore, we interpret the Commission's definition as requiring the provider itself to provide voice service, in addition to broadband, in order to be designated an unsubsidized competitor.

9. We conclude, based on our FCC Form 477 data, that it would be unreasonable to presume that all broadband providers shown on the National Broadband Map are also providing voice service. We therefore will utilize both Form 477 data and the National Broadband Map when developing the initial list of blocks that will be eligible for funding. A provider will be presumed to be offering voice if it reports voice subscribers for the relevant state on its Form 477 filing, with that presumption subject to rebuttal. Supplementing the National Broadband Map with the FCC's Form 477 data will enable challenges to the initial list of census blocks eligible for funding to be more narrowly focused, thereby reducing burdens on both interested parties and Commission staff.

10. Given the above presumptions and requirements, a provider will initially be presumed an unsubsidized competitor if (1) it is shown on the National Broadband Map as offering at least 3 Mbps/768 kbps and (2) it is reporting voice subscriptions in the relevant state on Form 477.

11. *Challenges and Evidentiary Showings.* Based on the above presumptions, the Bureau will publish a list of census blocks that are presumptively unserved by an unsubsidized competitor. The challenge process will focus on whether an area is served by an unsubsidized competitor. Parties may challenge this list in two ways. They may argue that the list is underinclusive—that a census block not included on the list is not served by an unsubsidized competitor and therefore should be on the list of blocks eligible for funding—or they may argue that the list is overinclusive—that a census block on the list is in fact served by an unsubsidized competitor and therefore should be excluded from the list.

12. We conclude that it is useful, given the number of census blocks potentially at issue in Phase II, to provide some advance guidance

regarding what sorts of evidentiary showings will be persuasive, and to define standards so that parties, including small businesses, seeking to challenge or rebut the eligibility of a census block for funding can participate in this process without unnecessary burden or expense. Our objective is to implement the Commission's requirement that funding not flow to an area where there is an unsubsidized competitor, while at the same time ensuring that census blocks are not unnecessarily excluded from funding.

13. To facilitate efficient and swift review of any challenges, parties must submit challenges in the format specified by the Bureau. Challengers will be required to provide the 15 digit Federal Information Processing Standard (FIPS) code and the state of the block in question; the name of the entity or entities putatively providing disqualifying service to that block according to the National Broadband Map, if applicable; the service criteria at issue; the type of supporting evidence submitted as an attachment; and a certification under penalty of perjury that the challenger has engaged in due diligence to verify statements in the challenge and that such statements are accurate to the best knowledge of the filer. Furthermore, because the Electronic Comment Filing System (ECFS) converts all files to .pdf format, in addition to posting on ECFS, we will also require parties to submit a copy of any challenge in a native format to the Commission, either by email to a designated Commission staff member or by delivery of storage media to a designated Commission staff member or the Commission Secretary. A proposed form for filing challenge is available at *http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA–13–1113A1.docx.*

14. We require parties submitting challenges to include specific evidence as an attachment to the challenge in support of their claims. For each challenged block, parties must provide evidence specifying the reason for the challenge. A price cap carrier contending that a particular census block is unserved by an unsubsidized competitor need only show that any one of the criteria (speed, latency, capacity, price, or voice) is not met. Given the difficulty in proving a negative (i.e., that service meeting defined criteria does not exist in a particular block), we will consider a variety of evidence in determining whether the price cap carrier has submitted sufficient evidence to warrant placing the challenge on public notice to solicit a response from interested parties. For example, a price cap carrier's evidence could consist of a signed certification that an employee of the company attempted to obtain service in a particular block, but was unable to do so, or that following a good faith search of a provider's advertising materials, it was unable to find any offering matching the Commission's Phase II service requirements. We would also consider a signed certification from an officer of the price cap carrier under penalty of perjury, that it has not ported a telephone number within the last year (or a longer period of time) to the purported unsubsidized competitor, as relevant to whether that provider is providing voice service. While we recognize that some customers may drop their landline service altogether, it would be unusual for a competitor offering voice service in the marketplace to have no voice customers at all.

15. In those instances where a potential unsubsidized competitor files a challenge contending that it does serve the area, notwithstanding evidence establishing a presumption that the block is unserved, evidence that it actually is providing voice and broadband service to customers in the relevant area is likely to be the most persuasive evidence. Thus, certifications relating to the number of customers, revenues received from customers, or customer lists (with customer identifying information redacted to preserve customer privacy) are likely to be more persuasive than propagation maps, advertisements of service offerings, or officer certifications, standing alone, that service is actually and immediately available—although we will consider each of the latter forms of evidence. We recognize that producing evidence demonstrating the existence of actual customers may be more difficult for potential competitors that have only recently begun to serve an area, but also seek some assurance that a provider is not merely advertising temporary or hypothetical service as a means of precluding Phase II funding for the price cap carrier.

16. Likewise, parties opposing challenges must provide, for each challenged census block they wish to contest, concrete and verifiable evidence supporting their claims that the challenge should not be granted. A corresponding evidentiary burden applies: respondents attempting to show that a block is served must show that all of the Commission's criteria are met, while respondents attempting to show that a block is unserved need only show that any one of the criteria is not met. We will consider an officer certification that a provider serves a particular census block with service meeting all of the Commission's criteria as some evidence that service exists; however, such a certification would be more persuasive if supported by other evidence, such as advertising materials, certifications relating to the number of customers and/or revenues received from customers, or customer lists (with customer identifying information redacted to preserve customer privacy). We also require that an officer of the company making or opposing a challenge certify to the accuracy of the information provided, subject to the penalties for false statements imposed under 18 U.S.C. 1001. Challenges and responses that do not meet these criteria will not be considered by the Bureau.

17. We conclude this process will provide the Bureau with an adequate evidentiary basis for making a determination that a particular census block is or is not served by an unsubsidized competitor, without unduly delaying implementation of Phase II. We are not persuaded by USTelecom's proposal that state mapping authorities contact all broadband providers to determine whether they meet each element of the Commission's service obligation. Simply put, that suggestion would potentially delay completion of the challenge process, and more importantly, would impose an unanticipated, unfunded burden on the state mapping authorities.

18. We will require parties to make a good faith effort to serve notice of challenges on interested parties. For a challenge that a listed census block is in fact served, the interested party is the price cap carrier in whose territory the block falls. For a challenge that a block not on the list is unserved, the interested party is any and all entities that are shown on the National Broadband Map as providing service to that census block. This notice will assist challenged parties who may not routinely monitor the Commission's daily digest for public notices. However, we recognize that in some circumstances it may prove impossible or exceedingly difficult to identify and locate the particular person that should be given service for a provider; therefore, we stop short of requiring service of actual notice. A challenger must include a certification along with its challenge that it has made a good faith attempt at providing notice to the interested party.

19. Once the challenges have been filed in ECFS, the Bureau will review all submissions to verify that evidence has been submitted to make a prima facie case and then issue a Public Notice

specifying those blocks for which rebuttals may be submitted. This Public Notice will be the official notice of all challenges, and will specify the date by which responses must be submitted.

20. Challengers will have 45 days from the date of the public notice announcing the initial eligible census blocks to submit their challenges. Respondents will have 45 days from the date of the public notice announcing the list of census blocks that warrant a response to submit replies to the challenges. This time period should give parties a sufficient opportunity to formulate their challenges and responses. This time period is consistent with that generally requested by commenters. After the close of the reply period, the Bureau will consider the challenges and responses. Where the Bureau concludes that the evidence shows it is more likely than not that the status of a census block should be changed, the Bureau will make the appropriate adjustment to the list of eligible census blocks, which will be published in a subsequent public notice setting forth the finalized list of eligible census blocks.

21. Finally, we conclude that we will not permit challenges below the census block level, such as a challenge that a particular location or group of homes within a census block is unserved. Any partially served census block will be treated as served. There are more than 6 million census blocks in price cap service territories. Conducting a sub-block challenge process on millions of blocks would pose significant burdens on both potential unsubsidized competitors as well as Bureau staff. We conclude that the administrative burden of constructing and carrying out a sub-census block challenge process far outweighs any marginal benefit from such a process.

B. Process for Electing To Make a State-level Commitment

22. We also sought comment in the *Phase II Challenge Process Public Notice,* 78 FR 4100, January 18, 2013, regarding the procedures for a carrier to elect to make a state-level commitment in Phase II of Connect America. In this Order, we announce the procedures that a carrier must follow to make such an election.

23. After completion of the challenge process described above, the Bureau will release a public notice announcing Connect America Cost Model-determined support amounts for each incumbent price cap carrier's funded census blocks within a given state. After the release of that public notice, incumbent price cap carriers will be given 120 days to accept or decline that support on a state-by-state basis for each state they serve. While some commenters argued that a longer election period is necessary, we conclude that 120 days strikes a balance by providing sufficient time for consideration and ensuring that transition into Phase II is completed within a reasonable timetable.

24. To elect to accept the support amount for a state, a carrier must submit a letter signed by an officer of the company declaring that the carrier accepts the support amount and commits to satisfy the service obligations for Phase II. In its acceptance letter, a carrier accepting funding must also acknowledge that if it fails to meet its service obligations, it will be subject to the penalties and/or enforcement actions, as specified by the Commission. If a letter of credit or some other form of security is required to ensure compliance with these obligations, such security must be submitted along with the letter accepting Phase II support.

25. We are persuaded that requiring elections to be publicly disclosed, after a brief period of Bureau review to confirm facial completeness, will serve the public interest by enabling consumers, state regulators, other providers in the area, and other interested parties to know that a particular area will be served through Phase II. The Bureau will specify in a public notice the specific procedures for submitting acceptances to a designated Commission staff member. This will give the Bureau an opportunity to review the acceptances before elections are publicly announced. Once this review is complete, the finalized elections will not be afforded confidentiality.

26. We sought comment as to what information we should require carriers to submit when making their elections. After further consideration, we conclude that it would not be productive to require carriers to specify at the time the election is made the specific locations where they intend to provide 6 Mbps downstream/1.5 Mbps upstream service, or where specifically they anticipate meeting their third year 85 percent buildout milestones. Deployment plans may change over the course of the five-year Phase II buildout period, and requiring carriers to declare this information up front would impose a significant burden on carriers accepting funding, while providing only limited benefit to the Commission and the public. Furthermore, by not requiring this additional information, carriers should be better able to make their elections within the 120-day window provided.

27. A carrier may elect to decline funding for a given state by submitting a letter signed by an officer of the company noting it does not accept Phase II support for that state. Alternatively, if a carrier fails to submit any election letter by the close of the 120-day election period, it will be deemed to have declined support.

28. Carriers are bound by their election decisions. After the close of the election period, a carrier may not retract its election, nor may it return support in exchange for being relieved of its obligations under Phase II. Such actions will have no effect. Thus, in the case of a carrier that accepted funding, the carrier will still be obligated to meet its deployment obligations and will face the same penalties as any carrier that fails to satisfy its obligations. This restriction is necessary not only to ensure the integrity of the state-level commitment process, but also to efficiently conduct the planning and implementation of auctions for areas in which carriers declined to make state-level commitments.

III. Procedural Matters

A. Paperwork Reduction Act

29. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

30. In this present document, we have assessed the effects of the procedures for electing to make a statewide commitment under Phase II and find that no businesses with fewer than 25 employees will be directly affected. We have structured the challenge process to minimize burdens on businesses with fewer than 25 employees. Unsubsidized competitors, many of which are small businesses, will face reduced burden due to the use of presumptions that a provider meeting the speed requirement also meets the other non-speed criteria. Furthermore, specifying the format and

probative evidence for the challenge process in advance will likely provide certainty to small businesses in filing any challenges and reduce the burden on such parties.

B. Final Regulatory Flexibility Act Certification

31. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

32. This Order implements the rules adopted by the Commission in the *USF/ICC Transformation Order*. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *USF/ICC Transformation Order*. Therefore, we certify that the requirements of this order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the order including a copy of this final certification, in a report to Congress pursuant to SBREFA. In addition, the order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

C. Congressional Review Act

33. The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201–206, 214, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201–206, 214, 218–220, 254, 303(r), 403, 1302, sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, and the delegations of authority in paragraphs 103, 170, and 171 of the *USF/ICC Transformation Order,* FCC 11–161, this Report and Order *is adopted,* effective July 3, 2013, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

Federal Comunications Commission.

Julie Veach,

Chief, Wireline Competition Bureau.

[FR Doc. 2013–12985 Filed 5–31–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2492–02]

RIN 0648–XC671

Snapper-Grouper Fishery of the South Atlantic; 2013 Recreational Accountability Measure and Closure for South Atlantic Golden Tilefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the recreational sector of golden tilefish in the South Atlantic for the 2013 fishing year through this temporary rule. Recreational landings from 2012, as estimated by the Science and Research Director (SRD), exceeded the recreational annual catch limit (ACL) for golden tilefish. Furthermore, information from 2013 recreational landings indicate that landings are projected to reach the recreational ACL on June 3, 2013. To account for the 2012 ACL overage and to prevent an ACL overage in 2013, NMFS closes the recreational sector for golden tilefish on June 3, 2013. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, June 3, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes golden tilefish, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational ACL for golden tilefish is 3,019 fish. In accordance with regulations at 50 CFR 622.193(a)(2), if recreational landings reach or are projected to reach the recreational ACL, the Assistant Administrator, NMFS (AA) will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If the recreational ACL is exceeded, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the recreational ACL in the following fishing year. Finalized landings data from the NMFS Southeast Fisheries Science Center indicate that the golden tilefish recreational ACL was exceeded by 560 fish in 2012. Landings information received thus far in 2013 indicate 2,985 golden tilefish have been caught and the recreational ACL of 3,019 fish is projected to be met on June 3, 2013. Therefore, this temporary rule implements an AM to close the recreational golden tilefish component of the snapper-grouper fishery for the remainder of the 2013 fishing year. As a result, the recreational sector for golden tilefish will be closed effective 12:01 a.m., local time June 3, 2013.

During the closure, the bag and possession limit for golden tilefish in or from the South Atlantic exclusive economic zone is zero. The recreational sector for golden tilefish will reopen on January 1, 2014, the beginning of the 2014 recreational fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the South Atlantic golden tilefish component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility

Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Regulatory Amendment 12 to the FMP (77 FR 61295, October 9, 2012) and located at 50 CFR 622.193(a)(2) have already been subject to notice and comment and authorize the AA to file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL. All that remains is to notify the public of the recreational closure for golden tilefish for the remainder of the 2013 fishing year. Additionally, there is a need to immediately notify the public of the reduced recreational fishing season for golden tilefish for the 2013 fishing year to prevent further golden tilefish recreational harvest and prevent the ACL from being exceeded, which will protect the South Atlantic golden tilefish resource. Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the length of the recreational fishing season, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the reduced recreational fishing season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–13048 Filed 5–29–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110819515–3444–02]

RIN 0648–BA98

Western Pacific Fisheries; Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS establishes requirements for fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. The intent of this rule is to implement fishery management measures consistent with Presidential Proclamations 8335, 8336, and 8337, which established the monuments.

DATES: This final rule is effective on July 3, 2013, except for the amendments to §§ 665.13, 665.14, and 665.16, and new §§ 665.903(b) and (c), 665.904(b), 665.905, 665.933(b) and (c), 665.934(b), 665.935, 665.963(b) and (c), 665.964(b), and 665.965. Those sections contain collection-of-information requirements that the Office of Management and Budget (OMB) has not yet approved under the Paperwork Reduction Act (PRA). When NMFS receives OMB approval, we will publish the control number and the effective date in the **Federal Register**.

ADDRESSES: The background and details of the monuments fishing provisions are described in Amendment 3 to the Fishery Ecosystem Plan for the Mariana Archipelago, Amendment 2 to the Fishery Ecosystem Plan for the Pacific Remote Island Areas, Amendment 3 to the Fishery Ecosystem Plan for American Samoa, and Amendment 6 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific. You may obtain the amendment from *www.regulations.gov* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or from *www.wpcouncil.org*.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Michael D. Tosatto (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, tel 808–944–2108.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage Pacific Island fisheries through fishery ecosystem plans (FEP) for American Samoa, the Mariana Archipelago (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), the Pacific Remote Island Areas (PRIA), Hawaii, and western Pacific pelagic fisheries. Fishing regulations for the Pacific Islands are found mostly in Title 50 of the Code of Federal Regulations, Part 665.

On January 6, 2009, President Bush issued Presidential Proclamations that established three marine national monuments in the Pacific Islands under the authority of the Antiquities Act. Proclamation 8335 established the Marianas Trench Monument, Proclamation 8336 established the Pacific Remote Islands Monument, and Proclamation 8337 established the Rose Atoll Monument. The Proclamations define the monuments' boundaries, prohibit commercial fishing, and describe the management of monument resources. The Proclamations direct the Secretary of Commerce, in consultation with the Secretary of the Interior, to take action under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to regulate fisheries and ensure proper care and management of the monuments, including allowing for traditional indigenous fishing practices.

The Council recommended incorporating the Proclamations' fishery management provisions into its FEPs, and recommended that NMFS establish certain provisions relating to traditional indigenous fishing practices. This final rule implements the Council's recommendations. Consistent with the Proclamations, and based on recommendations from the Council, this final rule creates three new subparts in 50 CFR Part 665, one for each of the three monuments. The rule implements new requirements as follows:

- Codify the boundaries of the monuments and their various management units.
- Prohibit commercial fishing in the Pacific Remote Islands and Rose Atoll Monuments, and in the Islands Unit of the Marianas Trench Monument.
- Establish management measures for non-commercial and recreational fishing in the monuments to include the following:
  - Require Federal permits and reporting for non-commercial and

recreational charter fishing to aid in the monitoring of fishing activities.

○ Allow customary exchange in non-commercial fisheries in the Marianas Trench and Rose Atoll Monuments to help preserve traditional, indigenous, and cultural fishing practices, on a sustainable basis.

○ Define customary exchange as the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, food, or fuel, that may be necessary to participate in fisheries in the western Pacific.

○ Limit permit eligibility for non-commercial fishing to community residents, as identified in the fishery ecosystem plans—specifically, American Samoa, Guam and the CNMI are fishing communities—and limit permit eligibility for recreational charters to businesses of local fishing communities for the Rose Atoll Monument and Marianas Trench Monument Islands Unit.

○ Prohibit all fishing within 12 nm of islands in the Pacific Remote Islands Monument, subject to U.S. Fish & Wildlife Service authority to allow non-commercial fishing in consultation with NMFS and the Council. For the purposes of this final rule, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

○ Prohibit all fishing within 12 nm around Rose Atoll. The Council and NMFS would review this regulation after three years.

• Prohibit the conduct of commercial fishing outside a monument and non-commercial fishing within the monument during the same trip.

To incorporate the new permits that this final rule establishes, NMFS is making administrative housekeeping changes to the Federal permit and reporting requirements at §§ 665.13 and 665.14, and the vessel identification requirements at § 665.16.

NMFS is also making administrative housekeeping changes to the requirements for low-use marine protected areas in the Pacific Remote Islands. NMFS had previously allowed limited fishing at Johnston Atoll, Palmyra Atoll, and Wake Island. Because this final rule prohibits fishing within 12 nm of those islands, it supersedes the provisions allowing fishing in the low-use marine protected areas. To eliminate the potential conflicting requirements, NMFS is removing the provisions allowing limited take in the monuments. Specifically, NMFS is removing the definition of the low-use area at § 665.599, applicable permit provisions at § 665.624, and the related prohibition at § 665.625.

Additional background information on this final rule is found in the preamble to the proposed rule published on February 21, 2013 (78 FR 12015), and is not repeated here.

Comments and Responses

On February 21, 2013, NMFS published a proposed rule and request for public comments (78 FR 12015); the comment period ended April 8, 2013. NMFS received multiple comments from 13 sources, including individuals, non-governmental organizations and the U.S. Department of the Interior, and responds as follows:

Comment 1: Customary exchange fishing for cultural and ceremonial needs continues to be an important motive for initiating fishing trips and for sharing catches widely among the indigenous people of the Marianas and American Samoa.

Response: NMFS agrees that providing fish for family and friends is a common motivation for initiating fishing trips in the U.S. Pacific Islands, including areas encompassed by the Monuments.

Comment 2: Without access to some cost recovery, it is doubtful that indigenous fishermen will be able to fish in the Monuments at all.

Response: We agree. NMFS and the Council recognize that fishing trips into the Monuments can involve traveling great distances and incurring high expenses. Allowing cost recovery of actual trip expenses through monetary reimbursements or other means enables the continuation of traditional access to the Monuments, perpetuates the practice of customary exchange, and is consistent with the traditional indigenous fishing provisions of the Presidential Proclamations.

Comment 3: The proposed definition of customary exchange equates to commercial fishing.

Response: The definition of customary exchange in this rule does not equate to commercial fishing within the meaning of the Proclamations. Proclamations 8335 establishing the Mariana Trench Monument and Proclamation 8337 establishing the Rose Atoll Monument require the Secretaries to prohibit commercial fishing while allowing sustainable non-commercial fishing, including traditional indigenous fishing practices. Neither the Antiquities Act, on which the Proclamations are based, nor the Proclamations themselves define commercial or non-commercial fishing. Instead, the ban on commercial fishing in the Proclamations must be read in context with the remainder of the Proclamations establishing the Monuments. The Proclamations clearly allow traditional indigenous fishing practices within the Monuments. Further, the Council's amendment establishes based on ample historical and sociological research that customary exchange of fish is an important element of traditional indigenous fishing practices in the region. In light of the foregoing, reading the term ''noncommercial'' to include ''customary exchange'' is consistent with the Proclamations' directives and does not conflict with the Proclamations' prohibition on commercial fishing. The rule, moreover, includes several safeguards and monitoring tools to ensure non-commercial fishing is sustainable, such as permit and catch logbook reporting requirements, and limitations on permit eligibility.

Comment 4: The final rule should contain one or more additional mechanisms to ensure enforcement of the ban on commercial fishing and ensure that customary exchange does not cross the line into commercial fishing. Such mechanisms could include (1) limit customary exchange to fishing practices that were part of the cultural, social, or religious tradition of local communities at the time the proclamations were issued, consistent with the Proclamations' allowance for ''traditional indigenous fishing,'' (2) establish bag limits for noncommercial fishing, (3) cap the amount of money that can be received through customary exchange, or (4) require fishermen to report fishing trip expenses and cash sales.

Response: The Council and NMFS considered these suggested mechanisms when developing the customary exchange provisions. Given the low level of commercial fishing in the past, and the low level of non-commercial fishing anticipated under this final rule, the Council and NMFS concluded that additional requirements are unnecessary at this time and could be counter-productive. There is a lack of scientific data to support the effectiveness of bag limits as a management tool for harvests of small amounts of pelagic species in the Monuments. Logbooks will be required to monitor non-commercial fishing activity in the Monuments, and NMFS and the Council may consider

additional requirements or restrictions in the future, if necessary. Additional requirements to report fishing trip expenses and cash sales run counter to cultural values and benefits of sharing fish, and could change fishing motivation and/or practice of customary exchange.

Comment 5: Absent some means of tracking expenses and reimbursements, it will be impossible to determine whether vessel owners or operators participating in customary exchange are being reimbursed for trip or non-trip expenses beyond those that the regulations contemplate. Therefore, there should be additional requirements on the customary exchange provision to ensure that reimbursements do not exceed actual trip expenses. This could include requirements for vessel owners and operators to report per trip expenses and monetary reimbursements as part of the logbook reporting requirements.

Response: See response to Comment 4.

Comment 6: To ensure that the practice of customary exchange does not lead eventually to commercial fishing, and to aid enforcement in determining when cash reimbursements exceed actual trip expenses, the final rule should require recordation of monetary reimbursements and trip expenses.

Response: See response to Comment 4.

Comment 7: The final rule should include a definition of Community Residents to include individuals either born in the relevant localities, or who have resided there for a period not less than one year, to bolster the regulations' goal of allowing customary exchange to ''help preserve traditional indigenous and cultural fishing practices.''

Response: Guam, the CNMI, and American Samoa are all identified as fishing communities in the FEPs (64 FR 19067, April 19, 1999) as defined under the Magnuson-Stevens Act. Thus, all persons that reside in fishing communities are community residents, regardless of how long they have been residents or whether they were born there. Given the low level of non-commercial fishing and customary exchange anticipated under this final rule, the Council and NMFS concluded that additional requirements or restrictions are unnecessary. Moreover, imposing additional time and birth requirements could frustrate the Proclamations' objective of allowing the continuation of community-based indigenous and cultural fishing, as traditionally practiced, including customary exchange.

Comment 8: Trip expenses should be limited only to ice, bait, fuel, and food. Unless circumscribed, actual trip expense might include a number of expenses, such as boat repairs or new equipment, which exceed the definition of customary exchange.

Response: NMFS clarifies here that for the purpose of customary exchange, actual trip expenses means only those expenses a non-commercial permit holder incurs specifically to make a non-commercial fishing trip. Actual trip expenses generally include ice, bait, fuel, food, but can also include other trip expenses such as equipment or repairs specific to a fishing trip to a monument. Because NMFS and the Council cannot foresee every actual trip expense, a specific list is not appropriate. NMFS does not consider actual trip expenses to include expenses that a permit holder would incur without making a fishing trip to the Monument, including expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel.

Comment 9: NMFS should prohibit community residents and their families and friends who obtain fish through customary exchange from selling, exchanging, bartering, or transferring those fish to persons outside the community. Prohibiting secondary transfers would help safeguard against unlawful commercial fishing, and ensure that the benefits of customary exchange are enjoyed only within the local community.

Response: NMFS disagrees that it is necessary to prohibit secondary sales and exchanges of fish obtained through customary exchange. The ample record considered by the Council does not include any evidence that secondary sales or exchanges of fish under customary exchange are either likely to occur, or would increase the likelihood of prohibited commercial fishing in the Monuments. Moreover, the comment letters provide no information beyond speculation that secondary sales and exchanges of fish would increase the risk of unauthorized commercial fishing. The Council's FEP amendments describe how customary exchange is an important element of traditional indigenous fishing practices in the region. As described in the amendments, customary exchange may include friends and family of community residents that live outside the community, but return regularly to participate in cultural and family events. The Council determined, and NMFS agrees, that prohibiting family and friends of community residents from sharing fishery resources harvested from the Rose Atoll Monument and the Marianas Trench Monument Islands Unit would be contrary to the community practices that are being preserved, and would be inconsistent with Chamorro, Carolinian, and American Samoan culture and tradition. In addition, based on the expected low level of participation in customary exchange, as fully documented in the Council record, as well as several safeguards and monitoring tools to ensure that non-commercial fishing is sustainable, NMFS does not believe that restrictions on secondary transfers are necessary at this time.

Comment 10: The definition of customary exchange should explicitly state that no monetary exchange may occur at any level in association with any fish caught in either the Islands Unit of the Mariana Trench Monument or the Rose Atoll Monument. This will prevent community residents who obtain fish through customary exchange from potentially receiving substantial monetary gain, beyond the costs associated with the trip.

Response: We disagree. As documented in the FEP amendments for this action, NMFS and the Council evaluated information from recent and historical fishing trips to the Rose Atoll and Mariana Trench Monuments, and concluded that the costs of a Monument fishing trip may range from several hundred to several thousand dollars. Therefore, allowing fishermen to recover actual trip expenses through monetary reimbursements or other means is necessary to provide for continued traditional access to the Monuments. Limiting reimbursements to actual trip expenses will help provide a necessary safeguard against the conduct of commercial fishing.

Comment 11: Without permit and catch limits, customary exchange could enable an unlimited number of residents and boats to go to Monument waters and fish until there are no more fish, thereby defeating any ideas of conservation or sustainability.

Response: Given the past low levels of fishing occurring in marine waters now designated as the Rose Atoll Monument and Marianas Trench Monument Islands Unit, NMFS notes that the regulations prohibiting commercial fishing, requiring fishing permits and catch reporting, limiting permit eligibility only to community residents and local businesses, and limiting customary exchange to include cost recovery only for actual trip expenses are appropriate constraints at this time to ensure non-commercial fishing is managed

sustainably. Additionally, the permit and catch reporting requirements will provide information that NMFS and the Council need to monitor catch and effort in the Monuments and develop additional requirements, if necessary.

Comment 12: Before the establishment of the Monuments, there was very little indigenous and arguably no cultural fishing occurring in any Monument waters. This is not a deeply rooted cultural tradition in Monument waters. There is nothing to preserve here, since the activity of traditional, indigenous, and cultural fishing have been negligible.

Response: The Council's FEP amendments that support this final rule includes analysis of studies and published papers that document fishing trips to Rose Atoll and the Mariana Trench Monument Islands Unit. Notwithstanding the relatively low number of fishing trips to areas within the Monuments, their cultural importance to fishing communities traditionally dependent on fishery resources is well documented. This final rule will manage and preserve those traditional fishing practices.

Comment 13: In all monument areas, there should be catch limits on all fishing based on biological perimeters specified in a comprehensive fisheries ecosystem plan (FEP), and based on a precautionary approach when biological data are limited.

Response: The setting of annual catch limits as specified in the FEP is beyond the scope of this rule. By way of further response, we note that we have specified catch limits applicable to the Rose Atoll and Mariana Trench Monuments. On March 13, 2013, NMFS issued a final rule specifying the 2013 annual catch limits and accountability measures for all federally managed bottomfish, crustacean, precious coral, and coral reef ecosystem resources in American Samoa, Guam, and the CNMI (78 FR 15885). NMFS and the Council specified the limits and accountability measures based on the process described in each western Pacific FEP, and codified at 50 CFR 665.4.

Specifically, the regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species included in an FEP, as recommended by the Council and in consideration of the best available scientific, commercial, and other information about the fishery. Catches of bottomfish, crustacean, precious coral, and coral reef ecosystem resources from the Rose Atoll and Mariana Trench Monuments will be counted towards the specified catch limits.

With respect to the Pacific Remote Islands Monument, NMFS did not specify catch limits for bottomfish, crustacean, precious coral, or coral reef ecosystem resources because there is no suitable habitat for these fisheries beyond the 12 nm no-fishing zone, except at Kingman Reef, where fishing for these resources does not occur.

Within all Monument areas, the level of non-commercial fishing is expected to be quite low. NMFS will continue to analyze all sources of fishing mortality in the Monuments, and will consider establishing Monument-specific ACL's if they become necessary. Specifically, fishing permit and catch reporting requirements, and the provision for consultation with the USFWS will provide information that NMFS and the Council need to monitor catch and effort in the monuments, and develop additional fishing requirements, including Monument-specific catch limits for species that may require them.

Comment 14: Before any fishing occurs at all, a scientific baseline study should be done to determine what the waters could support without human intervention.

Response: A baseline study without fishing is impossible to conduct because fishing in waters now encompassed by the Monument has long been conducted and continues to occur, although at low levels. Nonetheless, NMFS, in collaboration with the Council and other federal and local agencies have conducted biological and social assessments within waters now encompassed by the Monument. NMFS and the Council considered this information in developing and assessing the environmental impacts of the fishing regulations and found that the level of non-commercial fishing anticipated under the regulations is sustainable.

Comment 15: Only non-commercial fishing using natural materials should be allowed in the Mariana Trench Marine National Monument Waters.

Response: In developing monument regulations for traditional indigenous fishing, NMFS and the Council found that traditional indigenous fishing gear and practices necessarily evolve to provide for greater comfort, safety, and efficiency. We consider the use of modern gear integral to both maintaining traditional indigenous fishing in the Monuments, and preserving the safety of human life at sea consistent with National Standard 10.

Comment 16: There should be a prohibition on subsistence fishing in the island units of the Mariana Trench Marine National Monument, except in support of Native Chamorro/Carolinian cultural, religious, and subsistence practices consistent with the long-term conservation and protection of the region.

Response: The benefits derived from non-commercial fishing should apply to all fishing communities that have been historically dependent on fishery resources in the Monument. In developing the definition of non-commercial fishing, NMFS and the Council considered the concept of subsistence fishing, which in Guam and CNMI includes the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for cultural, social or religious purposes, and supports the long-term sustainability of monument fishery resources.

Comment 17: The Northern Islands should be a sanctuary for the indigenous people of the CNMI (people of Northern Mariana Descent). The monument area should be jointly managed so that our indigenous fishing rights are protected and that any person of Northern Mariana's Decent should be allowed to fish in the Monument area.

Response: To ensure that non-commercial fishing is conducted on a sustainable basis consistent with the Proclamation, this final rule requires NMFS to issue non-commercial fishing permits only to a community resident of Guam or the CNMI, or a fishing charter business established legally under the laws of Guam or the CNMI. This includes people indigenous to the Mariana Islands residing in CNMI and Guam. Additionally, NMFS and the Council will continue to consult the Mariana Monument Advisory Council and the CNMI government on Monument management issues, including indigenous fishing rights.

Comment 18: NMFS should require all fish to be eaten within monument boundaries in all the marine national monuments.

Response: Such a restriction would not allow for the traditional indigenous fishing practice of customary exchange, and is not necessary for the sustainable management of non-commercial fishing in the Monuments.

Comment 19: Codify in regulation, the coordinates of the 12 nautical mile no-take zone around the Pacific Remote Islands and Rose Atoll Monuments. This will enable marine vessels to comply with the prohibition on fishing.

Response: Codifying the prohibition on fishing within 12 nm provides sufficient information for compliance and enforcement. If it becomes clear that the administration or enforcement of the restricted areas would benefit from

codifying the boundary coordinates, the Council or NMFS could propose that in a future rulemaking.

Comment 20: After the regulations are finalized, chart the relevant boundaries of the Pacific Monuments on NOAA nautical charts.

Response: NMFS will contact NOAA's Office of Coast Survey for consideration of plotting relevant boundaries of the Pacific Monuments on future charts.

Comment 21: The regulations at § 665.599 should clarify that the no-take zone in the PRI monument extends 12 nm seaward of the low water mark, and not landward of the 50-fm curve.

Response: This final rule prohibits non-commercial fishing within 12 nm of emergent land within the PRIA Monument. See 50 CFR 665.933(e). The 12 nm no-take areas fully enclose the pre-existing 50-fm no-take areas that are codified at § 665.599. This final rule does not alter those areas, but NMFS will remove the redundant 50-fm no-take areas in a future housekeeping change.

Comment 22: Maug Island lagoon should have special protections to exclude all fishing.

Response: NMFS and the Council did not consider a fishing prohibition for Federal waters at Maug Island because there is no information indicating that the low level of fishing that occurs there poses a threat to any marine resource.

Comment 23: Non-commercial fishing should be allowed within 12 nm of Rose Atoll. Traditional fishing at Rose Atoll mostly occurs on the coral reefs, which are within three miles from shore. Prohibiting all types of fishing within 12 nm around Rose, basically prohibits going to Rose for traditional fishing.

Response: Federal regulations at § 665.99, which became effective on March 25, 2004 (69 FR 8336, February 24, 2004) already prohibit fishing landward of the 50-fm isobath around Rose Atoll to help protect coral reef ecosystem resources. The regulations extending the fishing prohibition to 12 nm around Rose Atoll is intended to help protect local bottomfish, coral reef ecosystem, and pelagic resources. However, the regulations maintain traditional access and fishing opportunities outside of 12 nm for culturally significant pelagic resources, including skipjack tuna. As described in the proposed rule (78 FR 12015, February 21, 2013), the Council will review this closed area after a three-year period; the review will include a review of the closure's impacts on residents of American Samoa, including the Manua Islands.

Comment 24: The proposed 12 nautical miles prohibited fishing zone around Rose Atoll does not allow the indigenous people of American Samoa to fish within the zone. The people of the Manua Islands request that the Council revisit the proposed 12 nm prohibited fishing zone around Muliava (Rose) Atoll and take into account the conservation need for the closure as well as the effect this has on our cultural and religious rights as indigenous Samoans.

Response: See response to comment 23.

Comment 25: The indigenous people of Aunuu Island voiced a strong objection to the inclusion of Aunuu fishing grounds to the extension of the American Samoa National Marine Sanctuary.

Response: Changes to the Sanctuary boundaries are outside the scope of this final rule. NMFS will forward the comment to NOAA's Office of National Marine Sanctuaries.

Comment 26: The residency requirement for permit eligibility appears to prevent recreational fishing from charters and private vessels, including by individuals on scientific research vessels, who visit the Monuments from other locations.

Response: The Council and NMFS believe that restricting non-commercial fishing opportunities to residents of fishing communities that are traditionally dependent upon marine resources in the Monuments was necessary to ensure sustainability, and is consistent with the intent of the Proclamations. Individuals who are not residents of American Samoa, Guam, or the CNMI are not eligible for applicable non-commercial fishing permits. However, they may fish recreationally as a guest aboard a permitted non-commercial vessel or recreational charter vessel. A person aboard a scientific research vessel may fish recreationally only in the Rose Atoll and the Mariana Trench Monuments Islands Unit, if the owner and operator of the vessel possess a non-commercial permit, or recreational charter permit.

Comment 27: Delete reference to all requirements that the USFWS consult with the Council on activities within 12 nm of the Pacific Remote Islands Monument on the basis that it is inconsistent with Proclamation 8336, which only requires the Secretary of the Interior to consult with the Secretary of Commerce.

Response: Requiring consultation with the Council is consistent with 16 U.S.C. 1851(a)(15), 50 CFR 600.310(i), and the FEP for the Pacific Remote Island Areas, under which the Council must account for all sources of fishing mortality within 12 nm of land in future determinations of catch limits. Consultation on USFWS permits will help inform those decisions. However, NMFS is clarifying in the final rule that consistent with the Proclamations, consultation means that the U.S. Fish and Wildlife Service will consult with NMFS, which in turn will consult with the Council.

Comment 28: The USFWS should only consult with NMFS, not the Council, regarding potential non-commercial fishing within 12 nm no-take zone of the PRI Monument because requiring such consultation would needlessly delay the decision-making process to the detriment of those seeking a permit.

Response: See response to comment 27.

Comment 29: The regulations prohibiting all fishing unless authorized by the USFWS have no basis in law because Presidential Proclamation 8336 did not establish a national wildlife refuge around Wake Island, and cannot expand refuge boundaries from 3 to 12 miles around Howland, Baker, Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll.

Response: The no-take areas are established under the authority of the Magnuson-Stevens Act, and are a necessary and appropriate measure to protect coral reef ecosystems, local bottomfish stocks, and local pelagic stocks. Because Presidential Proclamation 8336 expressly provides the Department of the Interior with responsibility for management of the Pacific Remote Island Monument, including out to 12 nm around Wake Island, Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, and Palmyra Atoll, and because the Secretary of the Interior delegated this authority to the USFWS, these no-take areas are subject to USFWS authority to permit non-commercial fishing, in consultation with NMFS and the Council as described in this final rule, pursuant to existing legal authorities.

The commenter's objection to the USFWS exercise of jurisdiction within national wildlife refuge boundaries extended by Secretary of the Interior is outside the scope of this rulemaking. NMFS will forward the comment to the USFWS.

Comment 30: Records should be kept of all fish caught.

Response: This final rule requires the operator of permitted vessels to keep an accurate and complete record of catch and effort on logbooks provided by NMFS, and to submit the logs to NMFS for each day of fishing within 30 days of the end of each fishing trip. The

permit and reporting requirements will allow the Council and NMFS to actively monitor and manage non-commercial fishing in the Monuments.

Comment 31: We strongly endorse the need for permit and corresponding reporting of catch.

Response: See response to Comment 30.

Comment 32: All fishing vessels shift between commercial and non-commercial fishing, so they should be required to have a vessel monitoring system (VMS) unit on board to assist in monitoring fishing activities and vessel locations. Commercial fishing vessels, in addition to a vessel monitoring system (VMS), should have an observer.

Response: Given the historical low level of fishing in the Monuments, the Council did not recommend a requirement for vessels to carry VMS units or observers.

Comment 33: When will promises made by a White House envoy to the people of the Mariana Islands in order to gain their support for the Mariana Trench Monument, as documented on Governor Benigno R. Fitial's remarks to the Mariana Trench Monument Advisory Council on June 5, 2012, be fulfilled? The promises included the following:

- No future efforts to incorporate waters of the Volcanic and Trench Units into conservation zones or addition bureaucratic layers of protection, such and Wilderness Area designations.
- Full traditional indigenous access and practices in the Island Unit be allowed subject to approval and regulation by a group of local officials and/or citizens.
- Conveyance to the CNMI, without restriction, 0–3 miles of nearshore submerged lands for all islands.
- Undertake an assessment of the opportunities for education, research, and other economic activity associated with the new monument.
- DOI to develop legislation, including provision for revenue-sharing, authorizing mineral exploration and extraction, and setting up the regulatory process for such activities.

Response: This final rule allows for the continuation of traditional access and indigenous fishing practices in the Islands Unit of the Mariana Trench Monument, as monitored by permits and reporting requirements. The Council, which includes representation from the CNMI Department of Land and Natural Resources and CNMI citizens knowledgeable in conservation and management of fishery resources of the CNMI, recommended the requirements. All other issues are beyond the scope of this final rule.

Comment 34: Charter boats have no place in the monuments and they go against the spirit and intent of the proclamations of the Islands Unit of the Mariana Trench Monument and the Rose Atoll Marine National Monument. By definition, charter boat fishing is commercial and there is nothing customary or traditional about it.

Response: The Magnuson-Stevens Act defines charter fishing to mean fishing from a vessel carrying a passenger for hire who is engaged in recreational fishing, and the Proclamations require that recreational fishing be managed as a sustainable activity. The final rule provides a procedure for permitting and monitoring charter boat fishing to ensure it is sustainable.

Comment 35: We strongly support codification of the commercial fishing prohibition as set forth in the Proclamations establishing the three marine national monuments.

Response: NMFS acknowledges the comment.

Comment 36: We support the proposed prohibition on using fish harvested through recreational fishing as a medium of customary exchange.

Response: Recreational fishing is motivated by sport or pleasure. The sale or customary exchange of recreational charter catches would be inconsistent with the Proclamations' conservation objectives.

Comment 37: The proposed regulatory text in § 665.905(a) should be revised to clarify that permits issued under this section are ''fishing'' permits.

Response: Further clarification is unnecessary because § 665.905 is already titled ''Fishing permit procedures and criteria.''

Comment 38: Proposed § 665.905(a)(3)(i) should be revised to include only family and friends of residents of the American Samoa, CNMI, and Guam fishing communities.

Response: Customary exchange is important for community members to participate in and contributes to the maintenance of the social fabric and cultural continuity of Pacific Island communities. While customary exchange most often occurs between a fisherman and community residents who are also family members or friends, NMFS and the Council did not find a conservation or management need to limit customary exchange to them.

Comment 39: The proposed regulations at § 665.933(b) should be revised to refer to the authorizations at both §§ 665.934(d) and 665.935.

Response: Adding a reference to § 665.934(d) within § 665.933(b) is unnecessary because the provisions of § 665.934(d) are captured in § 665.933(d).

Comment 40: NMFS should acknowledge that the Proclamations direct the Secretary of Commerce to consult with the Secretary of the Interior when regulating fisheries, and should clarify that the provision for traditional indigenous fishing practices applies only in the Rose Atoll and Mariana Trench Monuments.

Response: NMFS acknowledges the Proclamations' direction and provisions.

Comment 41: NMFS and the Council should consult with the USFWS when reviewing the prohibition on fishing within 12 nm of Rose Atoll after three years.

Response: The USFWS is a member of the Council and will be a part of any review and related recommendations relating to Monument fishery management measures.

Comment 42: NMFS should acknowledge that it currently allows limited fishing in the low-use marine protected areas of the Pacific Remote Islands at Johnston Atoll, Palmyra Atoll, and Wake Island, except for fishing within a National Wildlife Refuge unless specifically authorized by the USFWS.

Response: Since 2002, consistent with 50 CFR 665.621, fishing for PRIA coral reef management unit species has not been allowed within the boundary of a national wildlife refuge unless specifically authorized by USFWS. This prohibition applied to coral reef ecosystem species only. However, this final rule establishes a no-take fishing zone within 12 nm of the islands in the Pacific Remote Island Monument, and prohibits fishing for all federally managed species within this zone. This prohibition is subject to USFWS authority to allow fishing for any federally managed species, in consultation with NMFS and the Council as described in this final rule pursuant to existing legal authorities.

Comment 43: NMFS should acknowledge USFWS authority to permit non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument.

Response: As stated in the final rule, USFWS has authority to permit non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument, in consultation with NMFS and the Council as described in this final rule, pursuant to existing legal authorities.

Comment 44: NMFS should clarify that the residency requirements for non-commercial fishing permits apply only in the Islands Unit of the Mariana

Trench Monument, and not in the Volcano or Trench Units.

Response: NMFS clarifies that permits are not required for fishing in Volcano or Trench Units of the Marianas Trench Monument.

Changes to the Proposed Rule

In this final rule, NMFS is making five technical clarifications. First, in the proposed rule, the definition of ''customary exchange'' at § 665.12 inadvertently omitted a portion of the requirements at §§ 665.905(a)(3)(i) and 665.965(a)(3)(i). In those sections, the provisions for customary exchange specifically include family and friends of community residents. This final rule revises the definition to correct the inadvertent omission.

Second, because this final rule revises the definition of customary exchange to include family and friends of community residents, consistent with the Council's recommendation, repeating the provision in the permit terms and conditions at §§ 665.905(a)(3)(i) and 665.965(a)(3)(i) is redundant and, thus, unnecessary. This final rule removes the portion of the terms and conditions relating to friends and family of community residents from the permit conditions to eliminate the redundancy.

The third technical clarification relates to monetary reimbursement for customary exchange. The definition of customary exchange reflects the Council's recommendation that such exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, which includes, but is not limited to, ice, bait, fuel, and food, but can also include other trip expenses such as equipment or repairs specific to a fishing trip to a monument. Because NMFS and the Council cannot foresee every actual trip expense, a specific list is not appropriate. However, NMFS does not consider actual trip expenses to include expenses that a permit holder would incur without a fishing trip to the Monument, such as expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel. This final rule revises the definition to make that distinction clear.

The fourth technical clarification also relates to monetary reimbursement for customary exchange. In the proposed rule, in the terms and conditions for the Marianas Trench Monument Islands Unit and Rose Atoll non-commercial permits, NMFS inadvertently omitted the words ''including but not limited to.'' This error meant that monetary reimbursement under customary exchange would have been limited to ice, bait, fuel, or food, and the incorrectly-worded terms and conditions would have been inconsistent with the Council's definition. This final rule revises §§ 665.905(a)(3)(ii) and 665.965(a)(3)(ii) to correct the inadvertency. Also, see the response to Comment 8, above.

The fifth technical clarification relates to USFWS authorization of non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument. The proposed rule provided that USFWS would consult with NMFS and the Council when authorizing non-commercial fishing, but did not identify a process for such consultations. The purpose of consultation on USFWS permits is to enable NMFS and the Council to account for and monitor all sources of fishing mortality in the Monuments, consistent with their responsibilities under the Magnuson-Stevens Act. In this final rule, NMFS clarifies that the USFWS is not required to consult directly with the Council on its non-commercial fishing permits. Consistent with the Proclamation, the USFWS will consult with NMFS, and NMFS will in turn consult with the Council. This final rule revises § 665.934(d) to make that clarification.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, has determined that the FEP amendments are necessary for the conservation and management of the fisheries in the monuments, and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule and it is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the PRA. These requirements have not yet been approved by OMB, but such approval is expected in the near future. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective (see **DATES**).

For both types of non-commercial fishing (non-commercial and recreational charter) combined, NMFS expects to receive up to 10 permit applications each year for Rose Atoll and the Marianas Trench Islands Unit, each, and up to 15 permit applications a year for the Pacific Remote Islands Monument, for a total of 35 applications in a year. NMFS estimates that an application would take 15 minutes to complete, for a total maximum burden of 8.75 hours. If each fishing trip is three days, there could be 105 logbooks (35 trips x 3 days) in a year. At 20 minutes per log sheet, the maximum reporting burden would be 35 hours per year. Therefore, NMFS expects the total maximum annual burden for permit applications and reporting to be 43.75 hr. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Commercial fishing, Commonwealth of the Northern Mariana Islands, Fisheries, Guam, Marianas Trench, Monuments and memorials, Pacific Remote Islands, Rose Atoll.

Dated: May 28, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR chapter VI as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.12, add the definitions of ''Customary exchange'' and ''Recreational fishing,'' in alphabetical order, and revise the definition of ''Non-commercial fishing'' to read as follows:

§ 665.12 Definitions.

* * * * *

Customary exchange means the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific. Actual trip expenses do not include expenses that a fisherman would incur without making a fishing trip, including expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel.

* * * * *

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

* * * * *

Recreational fishing means fishing conducted for sport or pleasure, including charter fishing.

* * * * *

■ 3. In § 665.13,

■ a. Revise paragraphs (a), (c)(1), and (c)(2);

■ b. Revise paragraph (f)(2) introductory text, and add paragraphs (f)(2)(ix) through (f)(2)(xiii); and

■ c. Revise paragraph (g), to read as follows:

§ 665.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific western Pacific fisheries are set forth in subparts B through I of this part.

* * * * *

(c) * * *

(1) An application for a permit to operate in a Federal western Pacific fishery that requires a permit and is regulated under subparts B through I of this part may be obtained from NMFS PIRO. The completed application must be submitted to PIRO for consideration. In no case shall PIRO accept an application that is not on a Federal western Pacific fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing the application for fisheries under subparts B through I of this part. If an incomplete or improperly completed application is filed, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be administratively closed.

* * * * *

(f) * * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

* * * * *

(ix) Marianas Trench Monument non-commercial permit.

(x) Marianas Trench Monument recreational charter permit.

(xi) Pacific Remote Islands Monument recreational charter permit.

(xii) Rose Atoll Monument non-commercial permit.

(xiii) Rose Atoll Monument recreational charter permit.

(g) *Expiration.* A permit issued under subparts B through I of this part is valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

* * * * *

■ 4. In § 665.14 revise paragraphs (b)(1)(i) and (b)(2)(iv) to read as follows:

§ 665.14 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) * * *

(i) The operator of a fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, 665.801, 665.905, 665.935, or 665.965 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

* * * * *

(2) * * *

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, 665.624, 665.905, 665.935, or 665.965, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

5. In § 665.16 revise paragraph (a)(3) to read as follows:

§ 665.16 Vessel identification.

(a) * * *

(3) A vessel that is registered for use with a valid permit issued under subparts B through E and subparts G through I of this part must be marked in accordance with paragraph (b) of this section.

* * * * *

■ 6. Revise § 665.599 to read as follows:

§ 665.599 Area restrictions.

Except as provided in § 665.934, fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

■ 7. Remove and reserve § 665.624 paragraph (a)(1)(i) to read as follows:

§ 665.624 Permits and fees.

(a) * * *

(1) * * *

(i) [Reserved]

* * * * *

■ 8. Remove and reserve § 665.625 paragraphs (a) and (b)(3) to read as follows:

§ 665.625 Prohibitions.

* * * * *

(a) [Reserved]

(b) * * *

(3) [Reserved]

* * * * *

■ 9. In 50 CFR part 665, add subparts G, H, and I to read as follows:

Subpart G—Marianas Trench Marine National Monument

Sec.
665.900 Scope and purpose.
665.901 Boundaries.
665.902 Definitions.
665.903 Prohibitions.
665.904 Regulated activities.
665.905 Fishing permit procedures and criteria.
665.906 International law.

Subpart H—Pacific Remote Islands Marine National Monument

665.930 Scope and purpose.
665.931 Boundaries.
665.932 Definitions.
665.933 Prohibitions.
665.934 Regulated activities.
665.935 Fishing permit procedures and criteria.
665.936 International law.

Subpart I—Rose Atoll Marine National Monument

665.960 Scope and purpose.
665.961 Boundaries.
665.962 Definitions.
665.963 Prohibitions.
665.964 Regulated activities.
665.965 Fishing permit procedures and criteria.
665.966 International law.

Subpart G—Marianas Trench Marine National Monument

§ 665.900 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument. Nothing in this subpart shall be deemed to diminish or enlarge the jurisdiction of the Territory of Guam or the Commonwealth of the Northern Mariana Islands.

§ 665.901 Boundaries.

The Marianas Trench Marine National Monument includes the following:

(a) *Islands Unit.* The Islands Unit includes the waters and submerged lands of the three northernmost Mariana Islands (Farallon de Pajaros (Uracas), Maug, and Asuncion). The shoreward boundary of the Islands Unit is the mean low water line. The seaward boundary of Islands Unit is defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	144°1′22.97″	21°23′42.40″
2	145°33′25.20″	21°23′42.40″
3	145°44′31.14″	21°11′14.60″
4	146°18′36.75″	20°49′17.46″
5	146°18′36.75″	19°22′0.00″
6	145°3′12.22″	19°22′0.00″
7	144°1′22.97″	20°45′44.11″
1	144°1′22.97″	21°23′42.40″

(b) *Volcanic Unit.* The Volcanic Unit includes the submerged lands of designated volcanic sites. The boundaries of the Volcanic Unit are defined as circles of a one nautical mile radius centered on each of the following points:

ID	E. long.	N. lat.
Fukujin	143°27′30″	21°56′30″
Minami Kasuga #2.	143°38′30″	21°36′36″
N.W. Eifuku	144°2′36″	21°29′15″
Minami Kasuga #3.	143°38′0″	21°24′0″
Daikoku	144°11′39″	21°19′27″
Ahyi	145°1′45″	20°26′15″
Maug	145°13′18″	20°1′15″
Alice Springs	144°30′0″	18°12′0″
Central trough	144°45′0″	18°1′0″
Zealandia	145°51′4″	16°52′57″
E. Diamante	145°40′47″	15°56′31″
Ruby	145°34′24″	15°36′15″
Esmeralda	145°14′45″	14°57′30″
N.W. Rota #1	144°46′30″	14°36′0″
W. Rota	144°50′0″	14°19′30″
Forecast	143°55′12″	13°23′30″
Seamount X	144°1′0″	13°14′48″
South Backarc	143°37′8″	12°57′12″
Archaean site	143°37′55″	12°56′23″
Pika site	143°38′55″	12°55′7″
Toto	143°31′42″	12°42′48″

(c) *Trench Unit.* The Trench Unit includes the submerged lands of the Marianas Trench. The boundary of the Trench Unit extends from the northern limit of the EEZ around the Commonwealth of the Northern Mariana Islands to the southern limit of the EEZ around Guam as defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	145°5′46″	23°53′35″
2	145°52′27.10″	23°45′50.54″
3	146°36′18.91″	23°29′18.33″
4	147°5′16.84″	23°11′43.92″
5	147°22′31.43″	20°38′41.35″
6	147°40′48.31″	19°59′23.30″
7	147°39′59.51″	19°27′2.96″
8	147°48′51.61″	19°8′18.74″
9	148°21′47.20″	18°56′6.46″
10	148°42′50.50″	17°58′2.20″
11	148°34′47.12″	16°40′53.86″
12	148°5′39.95″	15°25′51.09″
13	146°23′24.38″	12°21′38.38″
14	145°28′33.28″	11°34′7.64″
15	143°3′9″	10°57′30″
16	142°19′54.93″	11°47′24.83″
17	144°42′31.24″	12°21′24.65″
18	145°17′59.93″	12°33′5.35″
19	147°29′32.24″	15°49′25.53″
20	147°27′32.35″	17°57′52.76″
21	147°20′16.96″	19°9′19.41″
22	146°57′55.31″	20°23′58.80″
23	145°44′31.14″	21°11′14.60″
24	144°5′27.55″	23°2′28.67″
1	145°5′46″	23°53′35″

§ 665.902 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Mariana Archipelago management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the submerged lands and, where applicable, waters of the Marianas Trench Marine National Monument as defined in § 665.901.

Proclamation means Presidential Proclamation 8335 of January 6, 2009, ''Establishment of the Marianas Trench Marine National Monument.''

§ 665.903 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subpart D of this part, the following activities are prohibited in the Islands Unit and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in violation of § 665.904(a).

(b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Transferring a permit in violation of § 665.905(d).

(d) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit on the same trip in violation of § 665.904(c).

§ 665.904 Regulated activities.

(a) Commercial fishing is prohibited in the Islands Unit.

(b) Non-commercial fishing is prohibited in the Islands Unit, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit during the same trip is prohibited.

§ 665.905 Fishing permit procedures and criteria.

(a) *Marianas Trench Monument Islands Unit non-commercial permit*—(1) *Applicability.* Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) *Eligibility criteria.* A permit issued under this section may be issued only to a community resident of Guam or the CNMI.

(3) *Terms and conditions.* (i) Customary exchange of fish harvested within the Islands Unit under a non-commercial permit is allowed, except that customary exchange by fishermen

engaged in recreational fishing is prohibited.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses, including but not limited to ice, bait, fuel, or food.

(b) *Marianas Trench Monument Islands Unit recreational charter permit*—(1) *Applicability.* Both the owner and operator of a vessel chartered to recreationally fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) *Eligibility criteria.* To be eligible for a permit issued under this section, a charter business must be established legally under the laws of Guam or the CNMI.

(3) *Terms and conditions.* (i) The sale or exchange through barter or trade of fish caught in the Monument by a charter boat is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.906 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart H—Pacific Remote Islands Marine National Monument

§ 665.930 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument.

§ 665.931 Boundaries.

The Monument, including the waters and submerged and emergent lands of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, is defined as follows:

(a) *Wake Island.* The Wake Island unit of the Monument includes the waters and submerged and emergent lands around Wake Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	165°42′56″	20°9′27″
2	167°32′23″	20°9′27″
3	167°32′23″	18°25′51″
4	165°42′56″	18°25′51″
1	165°42′56″	20°9′27″

(b) *Howland and Baker Islands.* The Howland and Baker Islands units of the Monument include the waters and submerged and emergent lands around Howland and Baker Islands within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	177°27′7″	1°39′15″ N.
2	175°38′32″	1°39′15″ N.
3	175°38′32″	0°38′33″ S.
4	177°27′7″	0°38′33″ S.
1	177°27′7″	1°39′15″ N.

(c) *Jarvis Island.* The Jarvis Island unit of the Monument includes the waters and submerged and emergent lands around Jarvis Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	160°50′52″	0°28′39″ N.
2	159°8′53″	0°28′39″ N.
3	159°8′53″	1°13′15″ S.
4	160°50′52″	1°13′15″ S.
1	160°50′52″	0°28′39″ N.

(d) *Johnston Atoll.* The Johnston Atoll unit of the Monument includes the waters and submerged and emergent lands around Johnston Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	170°24′37″	17°35′39″
2	168°37′32″	17°35′39″
3	168°37′32″	15°53′26″
4	170°24′37″	15°53′26″
1	170°24′37″	17°35′39″

(e) *Kingman Reef and Palmyra Atoll.* The Kingman Reef and Palmyra Atoll units of the Monument include the waters and submerged and emergent lands around Kingman Reef and Palmyra Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	163°11′16″	7°14′38″
2	161°12′3″	7°14′38″
3	161°12′3″	5°20′23″
4	161°25′22″	5°1′34″
5	163°11′16″	5°1′34″
1	163°11′16″	7°14′38″

§ 665.932 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Pacific Remote Island Areas management unit species as defined in §§ 665.601, 665.621, 665.641, and 665.661, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and submerged and emergent lands of the Pacific Remote Islands Marine National Monument, as defined in § 665.931.

Proclamation means Presidential Proclamation 8336 of January 6, 2009, ''Establishment of the Pacific Remote Islands Marine National Monument.''

§ 665.933 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subparts E and F of this part, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.935.

(c) Transferring a permit in violation of § 665.935(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.934(c).

(e) Non-commercial fishing within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council, in violation of § 665.934(d). For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.934 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except under permit and pursuant to the procedures and criteria established in § 665.935 or pursuant to § 665.934(d).

(c) Commercial fishing outside the Monument and non-commercial fishing

within the Monument during the same trip is prohibited.

(d) Non-commercial fishing is prohibited within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council. For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.935 Fishing permit procedures and criteria.

(a) *Non-commercial fishing*—(1) *Applicability.* Except as provided in section 665.934(d), a vessel that is used to non-commercially fish for, take, retain, or possess MUS in the Monument must be registered for use with a permit issued pursuant to §§ 665.603, 665.624, 665.642, 665.662, 665.801(f), or 665.801(g).

(2) *Terms and conditions.* Customary exchange of fish harvested in the Monument is prohibited.

(b) *Pacific Remote Islands Monument recreational charter permit*—(1) *Applicability.* Except as provided in § 665.934(d), both the owner and operator of a vessel that is chartered to recreationally fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) *Terms and conditions.* (i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) Customary exchange of fish harvested under a Monument recreational charter permit is prohibited.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.936 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart I—Rose Atoll Marine National Monument

§ 665.960 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing within the Monument. Nothing in this subpart shall be deemed to diminish or enlarge the jurisdiction of the Territory of American Samoa.

§ 665.961 Boundaries.

The Monument consists of emergent and submerged lands and waters extending seaward approximately 50 nm from Rose Atoll. The boundary is defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	S. lat.
1	169°0′42″	13°41′54″
2	167°17′0″	13°41′54″
3	167°17′0″	15°23′10″
4	169°0′42″	15°23′10″
1	169°0′42″	13°41′54″

§ 665.962 Definitions.

The following definitions are used in this subpart:

Management Unit Species or MUS means the American Samoa management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and emergent and submerged lands of the Rose Atoll Marine National Monument, as defined in § 665.961.

Proclamation means Presidential Proclamation 8337 of January 6, 2009, ''Establishment of the Rose Atoll Marine National Monument.''

§ 665.963 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subpart B of this part, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Transferring a permit in violation of § 665.965(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.964(c).

(e) Fishing within 12 nm of emergent land within the Monument in violation of § 665.964(d).

§ 665.964 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) All fishing is prohibited within 12 nm of emergent land within the Monument.

§ 665.965 Fishing permit procedures and criteria.

(a) *Rose Atoll Monument non-commercial fishing permit*—(1) *Applicability.* Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) *Eligibility criteria.* A permit issued under this section may be issued only to a community resident of American Samoa.

(3) *Terms and conditions.* (i) Customary exchange of fish harvested under a non-commercial permit within the Monument is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses, including but not limited to ice, bait, fuel, or food.

(b) *Rose Atoll Monument recreational charter permit* — (1) *Applicability.* Both the owner and operator of a vessel that is chartered to fish recreationally for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) *Permit eligibility criteria.* To be eligible for a permit issued under this section, a charter business must be established legally under the laws of American Samoa.

(3) *Terms and conditions.* (i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.966 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

[FR Doc. 2013–13113 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 106
Monday, June 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[NRC–2011–0162]

Consideration of Rulemaking To Address Prompt Remediation of Residual Radioactivity During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public Webinar and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking additional input from the public, licensees, Agreement States, non-Agreement States, and other stakeholders on a potential rulemaking to address prompt remediation of residual radioactivity during the operational phase of licensed material sites and nuclear reactors. The NRC has not initiated a rulemaking, but is gathering information and seeking stakeholder input on this subject for developing a technical basis document. To aid in this process, the NRC is requesting comments on the issues discussed in Section III, ''Specific Questions,'' in the **SUPPLEMENTARY INFORMATION** section of this document, as well as comments on the draft Regulatory Basis (ML13109A281). Additionally, the NRC will hold a public Webinar to facilitate the public's and other stakeholders' understanding of these issues and the submission of comments.

DATES: The public Webinar will be held in Rockville, Maryland on June 4, 2013, from 12:00 p.m. to 3:00 p.m. (EDT). Submit comments on the issues discussed in this document by August 2, 2013. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: You may submit comments by any one 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 documents filed under Docket ID NRC–2011–0162. 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.

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: Mr. James Shepherd, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6712; email: *james.shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRC published the Decommissioning Planning Rule (DPR) in 2011 (76 FR 33512; June 17, 2011) with an effective date of December 17, 2012. The DPR applies to the operational phase of a licensed facility, and requires licensees to operate in a way to minimize spills, leaks, and other unplanned releases of radioactive contaminants into the environment. It also requires licensees to check periodically for radiological contamination throughout the site, including subsurface soil and groundwater. The DPR does not have a mandatory requirement for licensees to conduct radiological remediation during operations. In the Staff Requirements Memorandum (SRM), SRM–SECY–07–0177—Proposed Rule: Decommissioning Planning (10 CFR Parts 20, 30, 40, 50, 70, and 72; RIN: 3150–AH45) (ADAMS Accession No. ML073440549) that approved the proposed DPR, the Commission directed the staff to ''make further improvements to the decommissioning planning process by addressing remediation of residual radioactivity during the operational phase with the objective of avoiding complex decommissioning challenges that can lead to legacy sites.'' To assist in this process, the NRC staff held a public Webinar on July 25, 2011, during which time input on a draft regulatory basis and a set of defined questions concerning a potential rulemaking was obtained from members of the public, licensees, Agreement States, non-Agreement States, and other interested persons. Additionally, interested persons were also afforded an opportunity to provide written comments on the same issues. (See 76 FR 42074; July 18, 2011.) Based upon this input, the NRC staff revised its draft regulatory basis.

Subsequently, in SRM–SECY–12–0046—Options for Revising the Regulatory Approach to Groundwater Protection (ADAMS Accession No. ML121450704), the Commission directed the staff to continue with its development of a regulatory basis for a rulemaking on remediation of residual radioactivity during the operational phase and to obtain public input on the draft regulatory basis. Therefore, the NRC staff is collecting supplementary input on a revised draft regulatory basis for a potential rulemaking requiring prompt remediation during operations.

II. Discussion

Currently, there are no NRC regulations that require licensees to promptly remediate radiological contamination. To enhance stakeholder engagement in finalizing a regulatory basis as a precursor to a proposed rule, the NRC staff developed a revised Draft Regulatory Basis (ML13109A281) to facilitate discussion with, and to solicit input from, interested stakeholders. The revised Draft Regulatory Basis describes the NRC's preferred approach to require licensees to promptly remediate radioactive spills, leaks and other areas of radioactive concentrations when certain threshold limits are met. NRC's preferred approach contemplates using the NRC effluent discharge concentrations as the threshold for action. The preferred approach would also include a provision allowing licensees to delay remediation when certain conditions are met. To justify delaying remediation, licensees would be required to perform analyses such as dose assessment, risk-assessments and/or cost-benefit analyses for the NRC's

review. In addition to the preferred approach, the NRC staff considered the following as alternative frameworks for requiring prompt remediation during operations:

1. Issuing a regulation that would require licensees to conduct prompt remediation of a spill, leak, or other release when certain contaminant thresholds, such as the restricted release limits in Section 20.1403 of Title 10 of the *Code of Federal Regulations* (10 CFR), are exceeded. Unlike the preferred approach, this alternative would not provide the licensee with the opportunity to conduct an analysis to justify delayed remediation.

2. Issuing site-specific license conditions requiring timely remediation following identification of contamination above some specified volume or concentration.

3. Issuing new guidance in the form of a NUREG publication.

4. No action (i.e., the NRC staff would rely on existing regulations and guidance documents to encourage licensees to consider prompt remediation after spills or leaks).

For more information on the preferred approach and alternatives, please refer to the revised Draft Regulatory Basis (ML13109A281).

III. Specific Questions

The NRC asked the following questions before, and received some public input. Several commenters stated that an additional rule is not necessary; and that issues can be addressed either by existing rule or by site-specific action. Others stated the proposed thresholds are not appropriate and that interim remediation is not cost effective. Those who supported the rule pointed to cases where there is significant contamination, and drew parallels to other regulations that require early cleanup, such as RCRA. As a result, the staff revised the previous draft document. The NRC is now seeking further stakeholder input on those questions and the staff's revisions to the document based on earlier comments:

1. Should the NRC proceed with rulemaking to address remediation of residual radioactivity during the operational phase? Why or why not?

2. If the NRC does implement a rule that requires prompt remediation of radioactive spills and leaks, what concentration, dose limits, or other threshold limits should trigger prompt remediation? Should the thresholds differ for soil versus groundwater contamination?

3. Should the NRC allow licensees to justify delaying remediation under certain conditions when the contaminant level exceeds the threshold limit? If yes, then what conditions should be used to justify a delayed remediation?

4. Should factors such as safety, operational impact, and cost be a basis for delaying remediation?

5. If the NRC implements a rule that allows licensees to analyze residual radioactivity to justify delaying remediation, then what should the licensee's analysis cover? For example, what kind of dose assessment, risk-assessments and/or cost-benefit analyses should be performed to justify delayed remediation? What other types of analyses are relevant?

6. If the NRC implements a rule that allows licensees to analyze residual radioactivity to justify delaying remediation, what role should the cost of prompt remediation versus remediation at the time of decommissioning play in the analysis?

7. If the NRC implements a rule that allows licensees to analyze residual radioactivity to justify delaying remediation, what standards or criteria should a licensee use to demonstrate to the NRC that a sufficient justification to delay remediation has been met?

8. Are there any other alternatives beyond those discussed in the Draft Regulatory Basis document that the NRC should have considered to address prompt remediation?

9. What other issues should the NRC staff consider in developing a technical basis for a rulemaking to address prompt remediation of residual radioactivity during site operations?

IV. Public Webinar

To facilitate the understanding of the public and other stakeholders of these issues and the submission of comments, the NRC staff has scheduled a public Webinar for June 4, 2013, from 12:00 p.m. to 3:00 p.m. (EDT). Webinar participants will be able to view the presentation slides prepared by the NRC and electronically submit comments over the Internet. Participants must register to participate in the Webinar. Registration information may be found in the meeting notice (ML13143A149). The meeting notice can also be accessed through the NRC's public Web site under the headings Public Meetings & Involvement > Public Meeting Schedule; see Web page *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Additionally, the final agenda for the public Webinar and the revised Draft Regulatory Basis document will be posted no fewer than 10 days prior to the Webinar at this Web site. Those who are unable to participate via Webinar may also participate via teleconference. For details on how to participate via teleconference, please contact Sarah Achten; telephone: 301–415–6009; email: *sarah.achten@nrc.gov.*

V. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0162 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–2011–0162.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2011–0162 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.

Dated at Rockville, Maryland, this 28th day of May 2013.

For the Nuclear Regulatory Commission.

Andrew Persinko, Deputy Director,

Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–13079 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0460; Directorate Identifier 2012–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Saab AB, Saab Aerosystems Model 340B airplanes. This proposed AD was prompted by a report that the elevator position quoted in an aircraft maintenance manual is incorrect for Saab 340B airplane. This proposed AD would require an inspection of the stick pusher rigging and an adjustment to the correct setting if necessary. We are proposing this AD to correct the rigging of the elevator position of the stick pusher to reduce the probability of a negative effect on the handling quality during stall, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by July 18, 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 Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2013–0460; Directorate Identifier 2012–NM–222–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

The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0256, dated December 3, 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:

> The standard stick pusher maximum elevator position of a SAAB 340B, prior to delivery, is set at 7.5 degrees trailing edge down. It was recently discovered that this value has been incorrectly referenced in the SAAB 340B Aircraft Maintenance Manual (AMM), which quotes an elevator position of 4 degrees trailing edge down for all aeroplanes, which is the correct value for SAAB SF340A aeroplanes only.
>
> If a SAAB 340B aeroplane has been re-rigged in accordance with current AMM procedure, there is a possibility that the deflection of the elevator will be less than intended.
>
> This condition, if not corrected, will affect the stall characteristics on the outer part of the envelope at maximum flap setting and aft centre of gravity (CG) configuration, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, SAAB AB Aeronautics issued Service Bulletin (SB) 340–27–105 to reduce the probability of a negative effect on the handling quality during stall.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the stick pusher rigging and, depending on findings, adjustment to the correct setting.

The reference in the aircraft maintenance manual (AMM) for setting the maximum elevator position of the stick pusher of SAAB 340B model was corrected in December 2012 to show the correct value of 7.5 degrees trailing edge down. The revised AMM showing the correct value was provided to the operators of Saab 340B Model airplanes by the manufacturer. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued Service Bulletin 340–27–105, Revision 01, dated August 31, 2012. 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 109 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 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 $112,270, or $1,030 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 adding the following new AD:

Saab AB, Saab Aerosystems: Docket No. FAA–2013–0460; Directorate Identifier 2012–NM–222–AD.

(a) Comments Due Date

We must receive comments by July 18, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model 340B airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight Controls.

(e) Reason

This AD was prompted by a report that the elevator position quoted in an aircraft maintenance manual is incorrect for Saab 340B airplane. We are issuing this AD to correct the rigging of the elevator position of the stick pusher to reduce the probability of a negative effect on the handling quality during stall, 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) Actions

Within 24 months after the effective date of this AD, inspect the stick pusher rigging, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–105, Revision 1, dated August 31, 2012. If an incorrect setting of the stick pusher maximum elevator position is found, before further flight, adjust the stick pusher rigging and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–105, Revision 1, dated August 31, 2012.

(h) Reporting Requirement

If during the inspection required by paragraph (g) of this AD, the elevator position is found outside specified limit, submit a report of the findings to: Saab AB, Business Area Support and Services, Air Division, Technical Support email: *Saab340.techsupport@saabgroup.com* Fax: +46 (0) 13 18 48 74 at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the value and corrective action. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120 0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the corrective action.

(2) If the inspection and corrective action was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Saab Service Bulletin 340–27–105, dated July 12, 2012.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0256, dated December 3, 2012; and Saab Service Bulletin 340–27–105, Revision 01, dated August 31, 2012; for related information.

(2) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.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 May 22, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–13006 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0461; Directorate Identifier 2012–NM–169–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 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes. The existing AD currently requires repetitive inspections for skin cracks at the shear tie end fastener locations of the fuselage frames, and repairing cracks if necessary. Since we issued that AD, additional cracking has been found on an airplane not affected by the existing AD. This proposed AD would also require repetitively inspecting for skin cracks next to the shear tie on airplanes with certain existing repair doublers, and corrective actions if necessary. This proposed AD would also revise the applicability to include additional airplanes. We are proposing this AD to detect and correct fatigue cracks in the fuselage skin that can propagate and grow, and result in reduced structural integrity and sudden decompression of the airplane in flight.

DATES: We must receive comments on this proposed AD by July 18, 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, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, Technical Operations Center, ANM–100D, FAA, Denver Aircraft Certification Office (ACO), 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; 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–2013–0461; Directorate Identifier 2012–NM–169–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 February 27, 2009, we issued AD 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009), for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes.

That AD requires inspecting for skin cracks at the shear tie end fastener locations of the fuselage frames, and repairing cracks if necessary. That AD resulted from a widespread fatigue damage (WFD) assessment of Model 747 airplanes. We issued that AD to detect and correct cracks in the fuselage skin that can propagate and grow, resulting in a loss of structural integrity and sudden decompression of the airplane during flight.

WFD Program

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 design approval holders (DAHs) and applicants establish a limit of validity (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 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.

Fuselage frame shear ties, located between longitudinal stringers, are an integral part of the load-bearing airframe structure. Cracks in the skin at fuselage frame shear tie end fastener locations, if not corrected, could result in cracks in the fuselage skin, which can propagate and become large, and result in loss of structural integrity and sudden decompression of the airplane in flight.

Actions Since Existing AD (AD 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009)) Was Issued

Since we issued AD 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009), we have received a report indicating that three skin cracks were found on one airplane at fastener holes common to the station (STA) 540 frame shear tie between stringer 23L and stringer 25L. The affected airplane had T-shaped shear ties in the area of the inspection required by AD 2009–06–02, but was not included in the applicability. Based on the reports of cracks in T-shaped shear ties, we have determined that the unsafe condition may exist on additional airplanes, including airplane line numbers 758 through 1419 inclusive (except large cargo freighter airplanes).

It has also been determined that post-repair inspections of certain existing repair doublers are necessary.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0461.

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

Although this proposed AD does not explicitly restate the requirements of AD 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009), this proposed AD would retain all of the requirements of AD 2009–06–02. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would also require repetitively inspecting for skin cracks next to the shear tie on airplanes with certain existing doublers, and corrective action if necessary. This proposed AD would also revise the applicability to include additional airplanes. This proposed AD would require accomplishing the actions specified in the service information described previously.

This proposed AD would also require that requests for approval of alternative methods of compliance (AMOCs) be directed to the Seattle Aircraft Certification Office.

The phrase ''corrective actions'' is 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.

Difference Between Proposed AD and Service Information

The service bulletin 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 234 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	30 or 49 work-hours (depending on inspection) × $85 per hour = $2,550 or $4,165 per inspection cycle.	$0	$2,550 or $4,165 per inspection cycle.	Up to $974,610 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) 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0461; Directorate Identifier 2012–NM–169–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by July 18, 2013.

(b) Affected ADs

This AD supersedes AD 2009–06–02, Amendment 39–15838 (74 FR 11013, March 16, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, as identified in Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 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 fuselage frame shear ties are subject to widespread fatigue damage (WFD). The actions were 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 cracks in the fuselage skin that can propagate and grow, and result in reduced structural integrity and sudden decompression of the airplane in flight.

(f) Compliance

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

(g) Repetitive Inspections

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, except as provided by paragraphs (i)(1) and (i)(2) of this AD, do an external detailed or high frequency eddy current (HFEC) inspection for skin cracks at specified shear tie end fastener locations of the fuselage frames, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, except as required by paragraph (i)(3) of this AD. Do all applicable corrective actions before further flight. Repeat the external detailed or HFEC inspection thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012.

(h) Post-Repair Inspections

For any external repair doubler in the inspection area specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, that has an upper or lower fastener row that is common to a shear tie end fastener: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, whichever occurs later, do an internal HFEC inspection for cracks in the skin next to the shear tie, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, except as required by paragraph (i)(3) of this AD. Do all corrective actions before further flight. Repeat the external detailed inspection thereafter at the time specified in Table 4 or Table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, as applicable.

(1) Before further flight after an inspection required by paragraph (g) of this AD.

(2) Within 2,000 flight cycles after the effective date of this AD.

(i) Service Information Clarifications and Exceptions

(1) Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, specifies certain compliance times in terms of the effective date of AD 2009–06–02,

Amendment 39–15838 (74 FR 11013, March 16, 2009). The effective date of AD 2009–06–02 is April 20, 2009.

(2) Where paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, specifies counting the compliance time ''after the revision 1 date of this service bulletin,'' this AD requires compliance within the applicable time after the effective date of this AD.

(3) Where Boeing Alert Service Bulletin 747–53A2682, Revision 1, dated May 24, 2012, specifies to contact Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008.

(k) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(l) 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 (m)(2) 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.

(m) Related Information

(1) For more information about this AD, contact Roger Caldwell, Aerospace Engineer, Technical Operations Center, ANM–100D, FAA, Denver ACO, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; 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, Washington 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, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 22, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–13002 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0136; Airspace Docket No. 13–ASW–4]

Proposed Amendment of Class D Airspace; Waco, TX, and Establishment of Class D Airspace; Waco, TSTC-Waco Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Waco, TX, by separating the Class D airspace at Waco Regional Airport from the Class D airspace at TSTC-Waco Airport. The FAA is taking this action to alleviate multiple air traffic controllers handling the same airspace and for the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport. The geographic coordinates for Waco Regional Airport also would be adjusted.

DATES: Comments must be received on or before July 18, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0136/Airspace Docket No. 13–ASW–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0136/Airspace Docket No. 13–ASW–4.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should

contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class D airspace at Waco, TX, by separating the Class D airspace area for Waco Regional Airport from the Class D airspace area for TSTC-Waco Airport to enhance the management of IFR operations for standard instrument approach procedures at both airports. TSTC-Waco Airport would be removed from its current designation and established under its own designator; Waco, TSTC-Waco Airport, TX, to accommodate this separation of controlled airspace surrounding Waco Regional Airport. This would enhance safety by not having multiple air traffic controllers responsible for the same airspace. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class D airspace areas are published in Paragraph 5000 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 D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 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 would amend controlled airspace at Waco Regional Airport, Waco, TX.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Waco, TX [Amended]

Waco, Waco Regional Airport, TX
(Lat. 31°36′44″ N., long. 97°13′49″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Waco Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

ASW TX D Waco, TSTC-Waco Airport, TX [New]

Waco, TSTC-Waco Airport, TX
(Lat. 31°38′16″ N., long. 97°04′27″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.4-mile radius of TSTC-Waco Airport, excluding that airspace within the Waco Regional Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

Issued in Fort Worth, TX on May 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–13109 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–XXXX; Airspace Docket No. 13–AGL–14]

Proposed Amendment of Class D Airspace; Grand Forks AFB, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Grand Forks Air Force Base (AFB), Grand Forks, ND. Changes to the airspace description are necessary due to changes in air traffic control tower operating hours. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport.

DATES: Comments must be received on or before July 18, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–XXXX/Airspace Docket No. 13–AGL–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort

Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–XXXX/Airspace Docket No. 13–AGL–14.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class D airspace to reflect removal of the specific effective dates and times established by a Notice to Airmen (NOTAM), for Grand Forks AFB, Grand Forks, ND. Controlled airspace is needed for the safety and management of IFR operations at the airport. Geographic coordinates of the airport will also be updated to coincide with the FAA's aeronautical database.

Class D airspace areas are published in Paragraph 5000 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 D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 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 would amend controlled airspace at Grand Forks AFB, Grand Forks, ND.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL ND D Grand Forks AFB, ND [Amended]

Grand Forks AFB, ND
(lat. 47°57′41″ N., long. 97°24′03″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.9-mile radius of Grand Forks AFB, and within 2.3 miles each side of the 174° bearing from the airport extending from the 4.9-mile radius to 5.6 nm south of the airport, excluding that airspace within the Grand Forks, ND, Class D airspace area.

Issued in Fort Worth, TX on May 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–13022 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0272; Airspace Docket No. 13–ASW–10]

Proposed Amendment of Class E Airspace; Lexington, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Muldrow Army Heliport, Lexington, OK. Changes to military mission requirements require conversion of the Class E surface area to a Class E transition area. The FAA is taking this action to enhance the safety

and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport.

DATES: Comments must be received on or before July 18, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0272/Airspace Docket No. 13–ASW–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0272/Airspace Docket No. 13–ASW–10.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace at Muldrow Army Heliport, Lexington, OK, to remove the Class E surface area and create Class E airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the heliport. This change would support low altitude military helicopter operations and ensure that standard instrument approaches are conducted within controlled airspace for the safety and management of IFR operations at the heliport.

Class E airspace areas are published in Paragraphs 6002 and 6005, respectively, 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 D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 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 would amend controlled airspace at Muldrow Army Heliport, Lexington, OK.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ASW OK E2 Lexington, OK [Removed]

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

ASW OK E5 Lexington, OK [New]

Muldrow Army Heliport, OK
(Lat. 35°01′35″ N, long. 97°13′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Muldrow Army Heliport.

Issued in Fort Worth, TX on May 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–13033 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0269; Airspace Docket No. 13–ASW–3]

Proposed Amendment of Class E Airspace; Commerce, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Commerce, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Commerce Municipal Airport (AAF). The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before July 18, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0269/Airspace Docket No. 13–ASW–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0269/Airspace Docket No. 13–ASW–3.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Commerce Municipal Airport, Commerce, TX. Small segments would extend from the current 6.3-mile radius of the airport to 9.5 miles north and 9.3 miles south of the airport to provide adequate controlled airspace for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 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 would amend controlled airspace at Commerce Municipal Airport, Commerce, TX.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E,

''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, 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.

* * * * *

ASW TX E5 Commerce, TX [Amended]

Commerce Municipal Airport, TX
(lat. 33°17′34″ N., long. 95°53′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Commerce Municipal Airport, and within 2 miles each side of the 183° bearing from the airport extending from the 6.3-mile radius to 9.3 miles south of the airport, and within 2 miles each side of the 003° bearing from the airport extending from the 6.3-mile radius to 9.5 miles north of the airport.

Issued in Fort Worth, TX on May 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–13034 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100203070–3463–01]

RIN 0648–AY47

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP). Amendment 5 was developed by the New England Fishery Management Council (Council) to: Improve the collection of real-time, accurate catch information; enhance the monitoring and sampling of catch at-sea; and address bycatch issues through responsible management. The proposed Amendment 5 management measures include: Revising fishery management program provisions (permitting provisions, dealer and vessel reporting requirements, measures to address herring carrier vessels, regulatory definitions, requirements for vessel monitoring systems, and trip notifications); increasing observer coverage and requiring industry to contribute funds towards the cost of increased observer coverage; expanding vessel requirements to maximize observer's ability to sample catch at-sea; minimizing the discarding of unsampled catch; addressing the incidental catch and bycatch of river herring; and revising the criteria for midwater trawl vessels' access to groundfish closed areas.

DATES: Public comments must be received no later than July 18, 2013.

ADDRESSES: Copies of supporting documents used by the Council, including the Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EIS/RIR/IRFA is also accessible via the internet at *http://www.nero.nmfs.gov.*

You may submit comments on this document, identified by NOAA–NMFS–2013–0066, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Herring Amendment 5 Proposed Rule.''
- *Fax:* (978) 281–9135, Attn: Carrie Nordeen.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and by email to *OIRA Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2008 (73 FR 26082), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 4 to the Atlantic Herring FMP to consider measures to: Improve long-term monitoring of catch (landings and bycatch) in the herring fishery, implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and develop a sector allocation process or other limited access privilege program for the herring

fishery. The Council subsequently conducted scoping meetings during May and June of 2008 to discuss and take comments on alternatives to these measures. After considering the complexity of the issues under consideration in Amendment 4, the Council voted on June 23, 2009, to split the action into two amendments to ensure the MSA requirements for complying with provisions for ACLs and AMs would be met by 2011. The ACL and AM components moved forward in Amendment 4, all other measures formerly considered in Amendment 4 were to be considered in Amendment 5. A supplementary NOI was published on December 28, 2009, (74 FR 68577) announcing the split between the amendments, and that impacts associated with alternatives considered in Amendment 5 would be analyzed in an EIS. At that time, measures considered under Amendment 5 included: A catch-monitoring program; measures to address river herring bycatch; midwater trawl access to Northeast multispecies (groundfish) closed areas; and measures to address interactions with the Atlantic mackerel (mackerel) fishery.

Following further development of Amendment 5, the Council conducted MSA public hearings in March 2012, National Environmental Policy Act (NEPA) public hearings at the beginning of June 2012, and, following the public comment period on the draft EIS that ended on June 4, 2012, the Council adopted Amendment 5 on June 20, 2012. The Council submitted Amendment 5 to NOAA Fisheries Service (NMFS) for review on September 10, 2012. Following a series of revisions, the Council submitted a revised version of Amendment 5 to NMFS on March 25, 2013. This action proposes management measures that were recommended by the Council in Amendment 5. If implemented, these management measures would:

- Modify the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expand possession limit restrictions to all vessels working cooperatively, consistent with pair trawl requirements;
- Eliminate the vessel monitoring system (VMS) power-down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establish an ''At-Sea Herring Dealer'' permit to better document the at-sea transfer and sale of herring;
- Establish an ''Areas 2/3 Open Access Permit'' to reduce the potential for the regulatory discarding of herring in the mackerel fishery;
- Expand dealer reporting requirements;
- Allow vessels to enroll as herring carriers with either a VMS declaration or letter of authorization to increase operational flexibility;
- Expand pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels and vessels issued an Areas 2/3 Open Access Permit to help facilitate monitoring;
- Reduce the advance notice requirement for the observer pre-trip notification from 72 hours to 48 hours;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available to observers for sampling;
- Increase observer coverage on Category A and B vessels and require industry contributions of a target maximum of $325 per day;
- Establish a framework provision for a river herring catch cap, such that a river herring catch cap may be implemented in a future framework to directly control river herring fishing mortality;
- Allow the existing river herring bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and
- Expand at-sea sampling of midwater trawl vessels fishing in groundfish closed areas.

A Notice of Availability (NOA) for Amendment 5, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on April 22, 2013 (78 FR 23733). The comment period on Amendment 5 NOA ends on June 21, 2013. Comments submitted on the NOA and/or this proposed rule prior to June 21, 2013, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 5. NMFS will consider comments received by the end of the comment period for this proposed rule (July 18, 2013) in its decision to implement measures proposed by the Council.

Proposed Measures

The proposed regulations are based on the measures in Amendment 5. The Council has spent several years developing this amendment, and it contains many measures that would improve herring management and that can be administered by NMFS. NMFS supports improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the herring fishery. NMFS also shares the Council's concern for reducing bycatch and unnecessary discarding. However, a few measures in Amendment 5 may lack adequate rationale or development by the Council, and NMFS identified potential utility and legal concerns with these measures. These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers to return to port; and a requirement for 100-percent observer coverage on Category A (All Areas Limited Access Herring Permit) and B (Areas 2/3 Limited Access Herring Permit) vessels, coupled with an industry contribution of a target maximum of $325 per day toward observer costs. NMFS expressed these potential concerns with these measures throughout the development of this amendment, but these measures have strong support from some stakeholders. This rulemaking describes potential concerns about these measures' consistency with the MSA and other applicable law. Following public comment, NMFS will determine if these measures can be approved or if they must be disapproved. NMFS seeks public comments on all proposed measures in Amendment 5, and in particular, NMFS seeks public comment on the proposed measures and whether those measures should be approved or disapproved.

1. Adjustments to the Fishery Management Program

Amendment 5 would revise several existing fishery management provisions, such as regulatory definitions, reporting requirements, and VMS requirements, and establish new provisions, such as additional herring permits and increased operational flexibility for herring carriers, to better administer the herring fishery.

Definitions

Amendment 5 would revise the regulatory definitions of transfer at-sea and offload to clarify these activities for the herring fishery. Amendment 5 would define a herring transfer at-sea as a transfer of fish from one herring vessel (including fish from the hold, deck, codend, or purse seine) to another vessel, with the exception of fish moved between vessels engaged in pair trawling. Amendment 5 would also define a herring offload as removing fish

from a herring vessel to be sold to a dealer. Both transfers at-sea and offloading are frequent activities in the herring fishery, and the differences between these activities are not always well understood. These definition revisions attempt to more clearly differentiate between activities that trigger reporting requirements. By clarifying these activities for the herring fishery, fishery participants are more likely to report these activities consistently, thereby improving reporting compliance, helping ensure data accuracy and completeness, and lessening the likelihood of double counting herring catch.

Herring Carriers

Amendment 5 would revise operating provisions for herring carrier vessels by establishing an At-Sea Herring Dealer permit for herring carriers that sell fish, allowing vessels to declare herring carrier trips via VMS, and exempting herring carriers from vessel trip report (VTR) requirements. Currently, herring carriers are vessels that may receive and transport herring caught by another fishing vessel, provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has been issued a letter of authorization (LOA) from the NMFS Regional Administrator (RA). The herring carrier LOA exempts the herring carrier from possession limits and catch reporting requirements associated with the vessel's herring permit. To allow time for the processing, issuance, and, if necessary, cancelation of the LOAs, the herring carrier LOAs have a minimum 7-day enrollment period. During the LOA enrollment period, vessels may only act as herring carriers and they may not fish for any species or transport species other than herring.

Amendment 5 would allow vessels to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. If a vessel chooses to declare a herring carrier trip via VMS, it would be allowed to receive and transport herring caught by another fishing vessel provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing fish, and only transports herring. By declaring a herring carrier trip via VMS, a vessel would be exempt from the catch reporting (i.e., daily VMS reporting) associated with its herring permit and not bound by the 7-day enrollment period of the LOA. A vessel declaring a herring carrier trip via VMS may only act as a herring carrier and may not fish for any species or transport species other than herring. This measure would increase operational flexibility by allowing vessels to schedule herring carrier trips on a trip-by-trip basis. Vessels that do not possess a VMS or choose not to declare a herring trip via VMS may still act as carriers by obtaining a herring carrier LOA from the NMFS RA and operating in accordance with the LOA requirements.

Herring carriers typically receive herring from harvesting vessels and transport those herring to Federal dealers. The harvesting vessel reports those herring as catch, and dealers report those herring as a purchase. NMFS verifies the amount of herring caught by comparing the amount reported by the harvesting vessel against the amount reported by the dealer. If the herring transported by a herring carrier is not purchased by a Federal dealer, then NMFS does not have any dealer reports to compare to the vessel reports. Amendment 5 would establish an At-Sea Atlantic Herring Dealer Permit that would be required for herring carriers that sell herring, rather than deliver those fish on behalf of a harvesting vessel to a dealer for purchase. This permit would require compliance with Federal dealer reporting requirements. Vessels that have both an At-Sea Atlantic Herring Dealer Permit and a Federal fishing permit would be required to fulfill the reporting requirements of both permits while in possession of both permits, as appropriate. NMFS expects the reporting requirements for the At-Sea Atlantic Herring Dealer Permit to minimize instances where catch is reported by harvesting vessels but then cannot be matched to dealer reports; thereby improving catch monitoring in the herring fishery.

Amendment 5 would exempt herring carriers from the VTR requirements associated with their vessel permits. Vessels issued herring permits are required to submit weekly VTRs to NMFS. However, dealers have incorrectly attributed catch to herring carrier vessels, rather than correctly attributed catch to the appropriate harvesting vessel, by reporting the herring carrier's VTR serial number rather than the VTR serial number of the harvesting vessel. To help prevent catch being attributed to the wrong vessel and minimize data mismatches between vessel and dealer reports, Amendment 5 would exempt herring carriers from the VTR requirement associated with their herring permit. Dealers would still be responsible for correctly reporting the VTR serial number of the vessel that harvested the herring.

Open Access Herring Permits

Amendment 5 would establish a new open access herring permit for vessels engaged in the mackerel fishery and would re-name the current open access herring permit. The existing open access herring permit (Category D) allows a vessel to possess up to 6,600 lb (3 mt) of herring per trip, limited to one landing per calendar day, in or from any of the herring management areas. All the provisions and requirements of the existing open access herring permit would remain the same, but the Category D permit would be renamed the All Areas Open Access Herring Permit, and this action would create a new open access permit for mackerel fishery participants fishing in herring management Areas 2 and 3.

The new Areas 2/3 Open Access Herring Permit (Category E) would allow vessels to possess up to 20,000 lb (9 mt) of herring per trip, limited to one landing per calendar day, in or from herring management Areas 2 and 3. Vessels that have not been issued a limited access herring permit but have been issued a limited access mackerel permit would be eligible for the Areas 2/3 Open Access Herring Permit. Vessels may hold both open access herring permits at the same time.

In its letter to NMFS deeming the proposed regulations for Amendment 5, the Council requested that NMFS clarify the reporting and monitoring requirements associated with the new Category E permit. Amendment 5 states that Category E permits would be subject to the same notification and reporting requirements as Category C (Incidental Catch Limited Access Herring Permit) vessels. Therefore, the proposed notification and reporting requirements associated with this new permit would be consistent with the requirements for Category C vessels, including the requirement to possess and maintain a VMS, VMS activity declaration requirements, and catch reporting requirements (i.e., submission of daily VMS catch reports and weekly VTRs).

Amendment 5 does not state that Category E permits would be subject to the same catch monitoring requirements as Category C vessels, including the proposed vessel requirements to help improve at-sea sampling and measures to minimize the discarding of catch before it has been made available to observers for sampling. When describing or analyzing catch monitoring requirements, Amendment 5 does not describe extending catch monitoring requirements for Category C vessels to Category E vessels, nor does

it analyze the impacts of catch monitoring requirements on Category E vessels. Because the Category C catch monitoring requirements were not discussed or analyzed in relation to Category E vessels, this action does not propose extending those catch monitoring requirements to Category E vessels.

There is significant overlap between the mackerel and herring fisheries. Mackerel and herring co-occur, particularly during January through April, which is a time that vessels often participate in both fisheries. Not all vessels participating in the mackerel fishery qualify for a limited access herring permit because they either did not have adequate herring landings or they are new participants in the mackerel fishery. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The creation of the new Areas 2/3 Open Access Herring Permit is intended to minimize the potential for regulatory discarding of herring by limited access mackerel vessels that did not qualify for a limited access herring permit, consistent with MSA National Standard 9's requirement to minimize bycatch to the extent practicable.

Trip Notification and VMS Requirements

Amendment 5 would expand and modify trip notification and VMS requirements for vessels with herring permits to assist with observer deployment and provide enforcement with advance notice of trip information to facilitate enforcement monitoring of landings. Currently, vessels with Category A or B permits, as well as any vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, are required to contact NMFS at least 72 hr in advance of a fishing trip to request an observer. Amendment 5 would modify this pre-trip observer notification requirement, such that vessels with limited access herring permits, vessels with open access Category D permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, vessels with open access Category E permits, and herring carrier vessels would be required to contact NMFS at least 48 hr in advance of a fishing trip to request an observer. This measure would assist NMFS's scheduling and deployment of observers across the herring fleet, with minimal additional burden on the industry, helping ensure that observer coverage targets for the herring fishery are met. NMFS intends for the change from a 72-hr notification requirement to a 48-hr notification requirement to allow vessels more flexibility in their trip planning and scheduling. The list of information that must be provided to NMFS as part of this pre-trip observer notification is described in the proposed regulations. Vessels with herring permits currently contact NMFS via phone. If this measure is implemented, details of how vessels should contact NMFS will be provided in the small entity compliance guide. If a vessel is required to notify NMFS to request an observer before its fishing trip, but it does not notify NMFS before beginning the fishing trip, that vessel would be prohibited from possessing, harvesting, or landing herring on that trip. If a fishing trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry an observer. All waivers or selection notices for observer coverage will be issued by NMFS to the vessel via VMS so the vessel would have an on-board verification of either the observer selection or waiver. However, a vessel is still subject to the more restrictive 72-hr notification associated with the groundfish midwater trawl or purse seine gear exempted fisheries specified at 50 CFR § 648.80(d)–(e).

Vessels with limited access herring permits are currently subject to a VMS activity declaration. Amendment 5 would expand that VMS activity declaration requirement and add a gear code declaration. Therefore, under Amendment 5, vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS via VMS of their intent to participate in the herring fishery prior to leaving port on each trip by entering the appropriate activity and gear codes in order to harvest, possess, or land herring on that trip.

Currently, vessels with Category A or B permits, and vessels with a Category C permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3 are subject to a pre-landing VMS notification requirement. Amendment 5 would expand this pre-landing VMS notification requirement so that vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS Office of Law Enforcement via VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or if a vessel does not fish seaward of the VMS demarcation line, at least 6 hr prior to landing.

Limited access herring vessels are currently able to turn off (i.e., power-down) their VMS when in port, if they do not hold other permits requiring continuous VMS reporting. Vessels authorized to turn off their VMS in port must submit a VMS activity declaration prior to leaving port. Amendment 5 would prohibit vessels with herring permits from turning off their VMS when in port, unless specifically authorized by NMFS. A vessel representative would request a letter of exemption (LOE) from NMFS to turn off its VMS if that vessel will be out of the water for more than 72 hr. Herring vessels would not be allowed to turn off their VMS until they have received an LOE from NMFS. Additionally, a vessel owner would be able to sign a herring vessel out of the VMS program for a minimum of 30 days by requesting and obtaining an LOE from NMFS. When VMS units are turned off, consistent with an LOE, the vessel would not be able to leave the dock until the VMS unit was turned back on. Amendment 5 would prohibit herring vessels from turning off VMS units in port to improve the enforcement of herring regulations and help make herring VMS regulations consistent with VMS regulations in other Northeast fisheries.

Possession Limits

All herring vessels engaged in pair trawling must hold herring permits, and their harvest is limited by the most restrictive possession limit associated with those permits. Amendment 5 would expand this restriction to all vessels working cooperatively in the herring fishery, including purse seine vessels and vessels that transfer herring at-sea. Therefore, under Amendment 5, each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a herring permit and would be subject to the most restrictive possession limit associated with the permits issued to those vessels working cooperatively. This measure would establish consistent requirements for vessels working cooperatively in the herring fishery and may improve enforcement of herring possession limits for multi-vessel operations.

Dealer Reporting Requirement

During the development of Amendment 5, some stakeholders expressed concern that herring catch is not accounted for accurately and that there needs to be a standardized method to determine catch. In an effort to address that concern, Amendment 5 would require herring dealers to accurately weigh all fish and, if catch is

not sorted by species, dealers would be required to document for each transaction how they estimate relative species composition. During the development of Amendment 5, NMFS identified potential concerns with the utility of this measure.

Dealers are currently required to accurately report the weight of fish, which is obtained by scale weights and/or volumetric estimates. Because this proposed measure does not specify how fish are to be weighed, this proposed measure may not change dealer behavior and, therefore, the requirement may not lead to any measureable change in the accuracy of catch weights reported by dealers. Further, this measure does not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS may be unable to evaluate the sufficiency of the methods used to estimate species composition. For these reasons, the requirement for dealers to document the methods used to estimate species composition may not improve the accuracy of dealer reporting. While the measure requiring dealers to document methods used to estimate species composition may not have direct utility in monitoring catch in the herring fishery, it may still inform NMFS's and the Council's understanding of the methods used by dealers to determine species weights. That information may aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to do so could render dealer permit renewals incomplete, precluding renewal of the dealer's permit. Therefore, there is incentive for dealers to make reasonable efforts to document how they estimate relative species composition, which may increase the likelihood that useful information will be obtained as a result of this requirement.

In light of the forgoing, NMFS seeks public comment on the extent to which the proposed measure has practical utility, as required by the MSA and the Paperwork Reduction Act, that outweighs the additional reporting and administrative burden on the dealers. In particular, NMFS seeks public comment on whether and how the proposed measure helps prevent overfishing, promotes the long-term health and stability of the herring resource, monitors the fishery, facilitates inseason management, or judges performance of the management regime.

2. Adjustments to At-Sea Catch Monitoring

One of the primary goals of Amendment 5 is to improve catch monitoring in the herring fishery. Amendment 5 would revise existing measures associated with at-sea monitoring, such as observer coverage levels and vessel requirements to assist observers sampling at-sea. Amendment 5 would also establish new provisions to monitor catch in the herring fishery, such as measures to minimize the discarding of catch before it has been sampled by an observer and industry funding to pay for increased observer coverage.

Northeast fisheries regulations specify requirements for vessels carrying NMFS-approved observers, such as providing observers with food and accommodations equivalent to those made available to the crew, allowing observers to access the vessel's bridge, decks, and spaces used to process fish, and allowing observers access to vessel communication and navigations systems. Amendment 5 would expand these requirements, such that vessels issued limited access permits and carrying NMFS-approved observers must provide observers with the following: (1) A safe sampling station adjacent to the fish deck, and a safe method to obtain and store samples; (2) reasonable assistance to allow observers to complete their duties; (3) advance notice when pumping will start and end and when sampling of the catch may begin; and (4) visual access to net/codend or purse seine and any of its contents after pumping has ended, including bringing the codend and its contents aboard if possible. Additionally, Amendment 5 would require vessels issued limited access permits working cooperatively in the herring fishery to provide NMFS-approved observers with the estimated weight of each species brought on board or released on each tow. These measures are anticipated to help improve at-sea catch monitoring in the herring fishery by enhancing the observer's ability collect quality data in a safe and efficient manner.

Currently, observer coverage levels in the herring fishery are determined by the Northeast Fisheries Science Center, based on the standardized bycatch reporting methodology (SBRM), after consultations with the Council, and funded by NMFS. Amendment 5 would increase the observer coverage in the herring fishery by requiring 100-percent observer coverage on Category A and B vessels. Many stakeholders believe this measure is necessary to accurately determine the extent of bycatch and incidental catch in the herring fishery. The Council recommended this measure to gather more information on the herring fishery so that it may better evaluate and, if necessary, implement additional measures to address issues involving catch and discards. The 100-percent observer requirement is coupled with a target maximum industry contribution of $325 per day. The at-sea costs associated with an observer in the herring fishery are higher than $325 per day, and, currently, there is no mechanism to allow cost-sharing of at-sea costs between NMFS and the industry.

Throughout the development of Amendment 5, NMFS advised the Council that Amendment 5 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Because Amendment 5 does not identify a funding source to cover all of the increased costs of observer coverage, the proposed 100-percent observer coverage requirement may not be sufficiently developed to approve at this time.

Recognizing these funding challenges, the Council recommended status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5, with the 100-percent observer coverage and partial industry funding requirement to become effective 1 year after the implementation of Amendment 5. During that year, the Council and NMFS, in cooperation with the industry, would attempt to develop a way to fund 100-percent observer coverage. A technical team, comprised of Council, Mid-Atlantic Fishery Management Council, and NMFS staff, is currently attempting to develop a legal mechanism to allow the at-sea costs of increased observer coverage to be funded by the industry. Even if the 100-percent observer coverage measure in Amendment 5 cannot be approved at this time, the team will continue to work on finding a funding solution to pay for the at-sea cost of the observer coverage in the herring fishery. If the technical team can develop a way to fund the at-sea costs of 100-percent observer coverage, a measure requiring 100-percent observer coverage on Category A and B vessels may be implemented in a future action, perhaps within the 1-year period specified in Amendment 5, subject to NMFS's budget appropriations and other observer data collection needs in the Northeast Region and elsewhere in the country.

Additionally, other measures proposed in this action would help improve monitoring in the herring fishery regardless of whether the 100-percent observer coverage measure is approved at this time. These proposed measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would require 100-percent observer coverage, coupled with a $325 contribution by the industry, would also require that: (1) The 100-percent coverage requirement would be re-evaluated by the Council 2 years after implementation; (2) the 100-percent coverage requirement would be waived if no observers were available, but not waived for trips that enter the River Herring Monitoring/Avoidance Areas; (3) observer service provider requirements for the Atlantic sea scallop fishery would apply to observer service providers for the herring fishery; and (4) states would be authorized as observer service providers. Because these additional measures appear inseparable from the 100-percent observer coverage requirement, their approval or disapproval is dependent upon the approvability of the partially industry-funded 100-percent observer coverage measure.

Amendment 5 would require limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. The Council recommended this measure to improve the quality of at-sea monitoring data by reducing the discarding of unsampled catch. If catch is discarded before it has been made available to the observer, that catch is defined as slippage. Fish that cannot be pumped and remain in the net at the end of pumping operations are considered operational discards and not slipped catch. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the following tow is brought aboard. Some stakeholders believe that slippage is a serious problem in the herring fishery because releasing catch before an observer can estimate its species composition undermines accurate catch accounting.

Amendment 5 would allow catch to be slipped if: (1) Bringing catch aboard compromises the safety of the vessel; (2) mechanical failure prevents the catch from being brought aboard; or (3) spiny dogfish prevents the catch from being pumped aboard. But if catch is slipped, the vessel operator would be required to complete a released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was slipped; (2) an estimate of the quantity and species composition of the slipped catch; and (3) the time and location of the slipped catch. Additionally, Amendment 5 would establish slippage caps for the herring fishery. Once there have been 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine) and carrying an observer, vessels that subsequently slip catch in that management area, using that particular gear type and carrying an observer, would be required to immediately return to port. NMFS would track slippage events and notify the fleet once a slippage cap had been reached. Slippage events due to spiny dogfish preventing the catch from being pumped aboard the vessel would not count against the slippage caps, but slippage events due to safety concerns or mechanical failure would count against the slippage caps. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, but not unduly penalize the fleet.

Throughout the development of Amendment 5 NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. The need for, and threshold for triggering, a slippage cap (10 slippage events by area and gear type) does not appear to have a strong biological or operational basis. Recent observer data (2008–2011) indicate that the estimated amount of slipped catch is relatively low (approximately 1.25 percent) compared to total catch. Observer data also indicate that the number of slippage events is variable across years. During 2008–2011, the number of slippage events per year ranged between 35 and 166. The average number of slippage events by gear type during 2008, 2009, and 2011 are as follows: 4 by bottom trawl; 36 by purse seine; and 34 by midwater trawl.

Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. This aspect of the measure may be seen as arbitrary. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard despite a safety concern. For these reasons, this measure may be inconsistent with the MSA National Standards 2 and10.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Therefore, if the safety of bringing catch aboard is a concern, leaving Closed Area I and continuing to fish would likely be an easier decision for a vessel operator to make than the decision to return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequality among the fleet is not an issue for the Closed Area I requirements, like it appears to be for the proposed slippage caps.

In 2010, the Northeast Fisheries Observer Program (NEFOP) revised the training curriculum for observers deployed on herring vessels to focus on effectively sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the herring fishery, including slippage, such as why catch was discarded, the estimated amount of discarded catch, and the estimated composition of discarded catch. Recent slippage data collected by observers indicate that: Information about these events, and the amount and composition of fish that are slipped, has improved; and the number of slippage events by limited access herring vessels has declined. Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

In summary, NMFS seeks public comment on whether there is a biological need for the proposed

slippage caps, whether the trigger (10 slippage events by area and gear type) for the proposed slippage caps has adequate justification, and whether the requirement to return to port would be inequitable or result in safety concerns. After evaluating public comment, NMFS will determine if the proposed slippage caps can be approved or if they must be disapproved. Even if the slippage caps must be disapproved, the ongoing data collection by NEFOP and the proposed sampling requirements for midwater trawl vessels fishing in groundfish closed areas, including a released catch affidavit requirement, would still allow for improved monitoring in the herring fishery, increased information regarding discards, and an incentive to minimize the discarding of unsampled catch.

3. Measures to Address River Herring Interactions

Amendment 5 would establish several measures to address the catch of river herring in the herring fishery to minimize bycatch and bycatch mortality to the extent practicable. River herring (the collective term for alewife and blueback herring) are anadromous species that may co-occur seasonally with herring and are harvested as a non-target species in the herring fishery. When river herring are encountered in the herring fishery, they are either discarded at sea (bycatch) or, because they closely resemble herring, they are retained and sold as part of the herring catch (incidental catch). For the purposes of this rulemaking, the terms bycatch and incidental catch are used interchangeably. While measures in Amendment 5 are not specifically designed to address the catch of shad (American and hickory) in the herring fishery, the overlap in distribution between river herring and shad suggests that measures to reduce the catch of river herring will also reduce the catch of shad.

River herring are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and individual states. According to the most recent ASMFC river herring stock assessment (May 2012), river herring populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including fishing (in both state and Federal waters), river passageways, water quality, predation, and climate change. In an effort to aid in the recovery of depleted or declining stocks, the ASMFC, in cooperation with individual states, prohibited state waters commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS considers river herring to be a species of concern and a candidate species under the Endangered Species Act (ESA). NMFS is currently determining whether listing river herring as threatened or endangered under the ESA is warranted.

Amendment 5 would establish River Herring Monitoring/Avoidance Areas for the herring fishery. These would be bimonthly areas to monitor river herring catch and encourage river herring avoidance. The coordinates for these areas are described in the proposed regulations at 50 CFR 648.200(f)(4). The areas are based on NEFOP data between 2005 and 2009 where river herring catch (greater than 40 lb (18 kg)) occurred in the herring fishery. Once established, the River Herring Monitoring/Avoidance Areas would be subject to the Amendment 5 proposed measures to reduce slippage and require 100-percent observer coverage on Category A and B vessels, if approved. While the magnitude of the effect of river herring bycatch on river herring populations is unknown, minimizing river herring bycatch to the extent practicable is a goal of Amendment 5.

Amendment 5 would establish a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in the herring fishery. The river herring bycatch avoidance strategy would be developed and evaluated by the Council, in cooperation with participants in the herring fishery, specifically the Sustainable Fisheries Coalition (SFC); the Massachusetts Division of Marine Fisheries (MA DMF); and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). This measure is based on the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring and shad bycatch by working within current fisheries management programs, without the need for additional regulatory requirements. The river herring bycatch avoidance program includes portside sampling, real-time communication with the SFC on river herring distribution and encounters in the herring fishery, and data collection to evaluate if oceanographic features may predict high rates of river herring encounters.

Phase I of the river herring bycatch avoidance strategy would include: (1) Increased monitoring and sampling of herring catch from the River Herring Monitoring/Avoidance Areas; (2) providing for adjustments to the River Herring Monitoring/Avoidance Area and river herring bycatch avoidance strategies through a future framework adjustment to the Herring FMP; and (3) Council staff collaboration with SFC, MA DMF, and SMAST to support the ongoing project evaluating river herring bycatch avoidance strategies.

Upon completion of the existing SFC/MA DMF/SMAST river herring bycatch avoidance project, Phase II of this proposed measure would begin. Phase II would involve the Council's review and evaluation of the results from the river herring bycatch avoidance project, and a public meeting to consider a framework adjustment to the Herring FMP to establish river herring bycatch avoidance measures. Measures that may be considered as part of the framework adjustment include: (1) Adjustments to the River Herring Monitoring/Avoidance Areas; (2) mechanisms to tracking herring fleet activity, report bycatch events, and notify the herring fleet of encounters with river herring; (3) the utility of test tows to determine the extent of river herring bycatch in a particular area; (4) the threshold for river herring bycatch that would trigger the need for vessels to be alerted and move out of the Area; and (5) the distance and/or time that vessels would be required to move from the Areas.

Amendment 5 would also establish the ability to consider implementing a river herring catch cap for the herring fishery in a future framework adjustment to the Herring FMP. Amendment 1 to the Herring FMP identified catch caps as management measures that could be implemented via a framework or the specifications process, with a focus on a haddock catch cap for the herring fishery. Amendment 5 contains a specific alternative that considers implementing a river herring catch cap through a framework or the specifications process. On the basis of the explicit consideration of a river herring catch cap, and the accompanying analysis, in Amendment 5, NMFS has advised the Council that it would be more appropriate to consider a river herring catch cap in a framework subsequent to the implementation of Amendment 5.

Amendment 5 contains some preliminary analysis of a river herring catch cap, but additional development of a range of alternatives (e.g., amount of cap, seasonality of cap, consequences of harvesting cap) and the environmental impacts (e.g., biological, economic) of a river herring catch cap would be necessary prior to implementation. Therefore, it would be more appropriate to consider implementing a river herring catch cap through a framework, rather than through the specifications. The Council

may begin development of the river herring catch cap framework immediately, but the framework cannot be implemented prior to the approval and implementation of Amendment 5.

During the development of Amendment 5, the ASMFC began work on a new stock assessment for river herring. It was hoped that the new assessment would help inform the analysis to determine a reasonable range of alternatives for a river herring catch cap. The ASMFC's river herring assessment was completed in May 2012, and the Council took final action on Amendment 5 in June of 2012. Therefore, there was not enough time to review the assessment, and if appropriate, incorporate its results in the development of a river herring catch cap in Amendment 5. At its November 2012 meeting, the Council approved a river herring catch cap framework (Framework 3 to the Herring FMP) as a priority for 2013.

In Framework 3, the Council would need to consider whether a river herring catch cap would provide sufficient incentive for the industry to avoid river herring and help to minimize encounters with river herring along with weighing the practicability of the proposed measures. Based on the ASMFC's recent river herring assessment, data do not appear to be robust enough to determine a biologically-based river herring catch cap and/or the potential effects on river herring populations of such a catch cap on a coast-wide scale. Still, the Council supports establishing the ability to consider a river herring catch cap and considering approaches for setting a river herring catch cap in the herring fishery as soon as possible.

The Mid-Atlantic Fishery Management Council is also considering establishing a river herring catch cap for its mackerel fishery. Due to the mixed nature of the herring and mackerel fisheries, especially during January through April, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch cap for both the herring and mackerel fisheries. On May 23, 2013, the New England and the Mid-Atlantic Councils' technical teams for the herring and mackerel fisheries met to begin development of river herring catch caps. Additionally, the New England Council currently plans to consider Framework 3 at its upcoming June and September 2013 meetings.

One of the primary goals of Amendment 5 is to address bycatch issues through responsible management, consistent with the MSA National Standard 9 requirement to minimize bycatch and mortality of unavoidable bycatch to the extent practicable. Monitoring and avoidance are critical steps to a better understanding of the nature and extent of bycatch in this fishery in order to sufficiently analyze and, if necessary, address bycatch issues. The Council considered other measures to address river herring bycatch in Amendment 5, including closed areas. Because the seasonal and inter-annual distribution of river herring is highly variable in time and space, the Council determined that the most effective measures in Amendment 5 to address river herring bycatch would be those that increase catch monitoring, bycatch accounting, and promote cooperative efforts with the industry to minimize bycatch to the extent practicable.

4. Measures to Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 would expand the existing requirements for midwater trawl vessels fishing in Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. These Closed Areas include: Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western Gulf of Maine Closure Area. The coordinates for these areas are defined at 50 CFR 648.81(a)–(e). Amendment 5 would require vessels with a herring permit fishing with midwater trawl gear in the Closed Areas to carry a NMFS-approved observer and bring all catch aboard the vessel and make it available for sampling by an observer. Herring vessels not carrying a NMFS-approved observer may not fish for, possess, or land fish in or from the Closed Areas. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the next tow is brought aboard. Amendment 5 would allow catch to be released before it was pumped aboard the vessel if: (1) Pumping the catch aboard could compromise the safety of the vessel, (2) mechanical failure prevents the catch from being pumped aboard, or (3) spiny dogfish have clogged the pump and prevent the catch from being pumped aboard. But if catch is released for any of the reasons stated above, the vessel operator would be required to immediately exit the Closed Area. The vessel may continue to fish, but it may not fish in any Closed Area for the remainder of that trip. Additionally, vessels that release catch before it has been sampled by an observer must complete a midwater trawl released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was released; (2) an estimate of the weight of fish caught and released; and (3) the time and location of the released catch.

As described previously, given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch rather than released catch affidavits provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

These proposed measures to address midwater trawl access to Groundfish Closed Areas are similar to the proposed measures to minimize slippage; however, there are important differences between these measures. Under these proposed measures, if midwater trawl vessels release catch in the Closed Areas, they are allowed to continue fishing, but they may not fish in Closed Areas for the remainder of that trip. The proposed requirement to leave the Closed Areas and continue to fish is less punitive than the proposed requirement to return to port if a vessel slips catch. Therefore, if the safety of bringing catch aboard is a concern, simply leaving the Closed Areas but continuing to fish would likely be an easier decision for a vessel operator to make than the decision to stop fishing and return to port. Additionally, because the consequences of releasing catch apply uniformly to all vessels under these proposed requirements, the potential of inequality across the fleet is not an issue for these proposed requirements, like it appears to be for the proposed slippage caps.

Analyses in the Amendment 5 FEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the Closed Areas. Additionally, the majority of groundfish catch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap for the herring fishery. However, as described previously, the Council believes it is important to determine the extent and nature of bycatch in the herring fishery. This proposed measure would still allow the herring midwater trawl fishery to operate in the Closed Areas, but it would ensure that opportunities for monitoring and sampling were maximized.

5. Adjustments to List of Measures Modified Through Framework Adjustments or Specifications

Amendment 5 would specify the ability to modify management measures revised or established by Amendment 5 through a framework adjustment to the Herring FMP or the specifications process.

The measures that could be modified through a framework would include: (1) Changes to vessel trip notification and declaration requirements; (2) adjustments to measures to address net slippage; (3) adjustments to requirements for observer coverage levels; (4) provisions related to an industry-funded catch monitoring program; (5) River Herring Monitoring/Avoidance Areas; (6) provisions for the river herring bycatch avoidance program; (7) changes to criteria/provisions for access to the Groundfish Closed Areas; and (8) river herring catch caps.

The list of measures that could be modified through the specifications process would include: (1) Possession limits; (2) River Herring Monitoring/Avoidance Areas; (3) river herring catch caps; and (4) provisions related to an industry-funded catch monitoring program.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 5 to the Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment and the concerns noted in the preamble.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a final environmental impact statement (FEIS) for Amendment 5. A notice of availability for the FEIS was published on April 26, 2013 (78 FR 24743). The FEIS describes the impacts of the proposed measures on the environment. Proposed revisions to fishery management program measures, including permitting provisions, dealer and vessel reporting requirements, measures to address carrier vessels, regulatory definitions, and trip notifications, are expected to improve catch monitoring in the herring fishery with positive biological impacts on herring and minimal negative economic impacts on human communities. Proposed increases to observer coverage requirements, measures to improve at sea-sampling by observers, and measures to minimize the discarding of catch before it has been sampled by observers are also expected to improve catch monitoring and have positive biological impacts on herring. The economic impacts on human communities of these proposed measures are varied, but negative economic impacts may be substantial compared to status quo. Proposed measures to address bycatch to the extent practicable are expected to have positive biological impacts and moderate negative economic impacts on human communities. Lastly, all proposed measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat and protected resources.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The RFA recognizes three kinds of small entities: Small businesses, small organizations, and small governmental jurisdictions. The majority of the proposed measures in Amendment 5 affect vessels participating in the herring fishery. The small business criteria in the Finfish fishing industry is a firm that is independently owned and operated and not dominant in its field of operation, with gross annual receipts $4 million or less. Additionally, a portion of the proposed measures in Amendment 5 affect herring dealers. The small business standard for fish and seafood wholesalers is 100 employees. Some of the herring dealers are also processors. The small business standard for Fresh and Frozen Seafood Processing is 500 employees. Neither small organizations nor small governmental jurisdictions are expected to experience significant economic impacts by measures proposed in Amendment 5.

In 2011, there were 2,240 vessels with herring permits. Of these vessels, 91 vessels with limited access herring permits (Category A, B, and C) and 2,147 vessels with open access herring permits (Category D) would be considered small entities for RFA purposes. Category D vessels participate incidentally in the herring fishery and would only be subject to the proposed regulatory definitions and the requirements for midwater trawl vessels fishing in the Groundfish Closed Areas. Therefore, this RFA analysis is focused on the 91 vessels with limited access herring permits.

Herring vessels can work cooperatively in temporary, short-term partnerships for pair trawling or seining activities, and vessels may also be affiliated with processing plants. NMFS currently has no data regarding vertical integration or ownership. Therefore, for the purposes of this RFA analysis, the entity in the harvesting sector is the individual vessel. Additionally, at this time, all dealers/processors are treated as small entities.

Section 5.0 in Amendment 5 describes the vessels, key ports, and revenue information for the herring fishery, therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Minimizing Significant Economic Impacts on Small Entities

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirements, which are described in detail in the preamble, have been submitted to OMB for approval as a new collection. Amendment 5 would also remove a VMS power-down exemption for herring vessels and a catch reporting requirement for herring carrier vessels. Amendment 5 would prohibit herring vessels from powering-down their VMS units in port, unless specifically authorized by the NMFS RA. The existing power-down exemption was approved under OMB Control Number 0648–0202 and, upon renewal, will be removed from that information collection. Additionally, Amendment 5 would remove the existing weekly VTR requirement for herring carrier vessels. That requirement was approved under OMB Control Number 648–0212 and, upon renewal, will be removed from that information collection. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Amendment 5 would establish two new herring permits. The application process to obtain a new Areas 2/3 Open Access Permit takes an estimated 1 min to complete and costs $0.45 to mail. The

new Areas 2/3 Open Access Herring Permit would require the vessel to purchase and maintain a VMS. Because other Northeast Federal permits require vessels to maintain a VMS, it is estimated that only 6 vessels that were issued open access herring permits do not already have a VMS. The average cost of purchasing and installing a VMS is $3,400, the VMS certification form takes an estimated 5 min to complete and costs $0.45 to mail, and the call to confirm a VMS unit takes an estimated 5 min to complete and costs $1. The average cost of maintaining a VMS is $600 per year. Northeast regulations require VMS activity declarations and automated polling of VMS units to collect position data. Each activity declaration takes an estimated 5 min to complete and costs $0.50 to transmit. If a vessel takes an average of 5 trips per year, the burden estimate for the activity declarations would be 25 min and $3. Each automated polling transmission costs $0.06 and a vessel is polled once per hour every day of the year. The annual estimated cost associated with polling is $526. In summary, the total annual burden estimate for a vessel to purchase and maintain a VMS would be 35 min and $4,530.

Amendment 5 would also require that vessels issued the new Areas 2/3 Open Access Herring Permit comply with existing catch reporting requirements for Category C vessels, specifically the submission of daily VMS reports and weekly VTRs. The cost of transmitting a catch report via VMS is $0.60 per transmission and it is estimated to take 5 min to complete. If a vessel takes an average of 5 trips per year and each trip lasts an average of 2 days, the total annual burden estimate of daily VMS reporting for a vessel is estimated to be 50 min and $6. Category D vessels are currently required to submit weekly VTRs, so there would be no additional burden associated with VTRs for those vessels. If a vessel without a Category D permit was issued the new Areas 2/3 Open Access Herring Permit, the annual burden estimate of VTR submissions is $18. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by $0.45 to equal $18. The VTR is estimated to take 5 min to complete. Therefore, the total annual burden estimate of weekly VTRs is $18 and 3 hr and 20 min.

This action proposes new reporting burdens associated with obtaining an At-Sea Herring Dealer Permit. The new herring dealer permit is for herring carriers that sell fish. Historically, approximately 25 vessels per year have been issued an LOA to act a herring carrier. The application for an At-Sea Herring Dealer Permit would take an estimated 15 min to complete and $0.45 to mail. The annual burden estimate to renew an At-Sea Herring Dealer Permit would be 5 min to complete the renewal and $0.45 to mail the renewal. Dealers are required to submit weekly reports via the internet. These reports are estimated to take 15 min to complete; therefore, the annual burden associated with dealer reporting is 13 hr. The cost for this information collection is related to internet access. The 25 vessels that may obtain the new At-Sea Herring Dealer Permit may not already be accessing the internet for other reasons/requirements, and would have to obtain internet access. Internet access would be required for the submission of weekly dealer reports. Operating costs consist of internet access, available through either dial-up or cable modem, with an average annual cost of $652 per year. Therefore, the annual cost burden associated with dealer reporting is estimated to be $652.

Amendment 5 would expand the number of herring vessels required to submit a VMS pre-landing notification and would add a gear declaration to the existing VMS activity declaration requirement. A subset of herring vessels are currently required to notify NMFS OLE via VMS 6 hr prior to landing, and this action proposes to expand that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. It is estimated that Amendment 5 would require an additional 51 Herring Category C vessels, 80 Herring Category E vessels, and 25 herring carriers to submit VMS pre-landing notification. Each VMS pre-landing notification is estimated to take 5 min to complete and costs $1. Category C vessels are estimated to take an average of 13 trips per year, so the total annual burden estimate for a Category C vessel making VMS pre-landing notifications would be 65 min and $13. The new Category E vessels would take an estimated 5 trips per year, so the total burden estimate for a Category E vessel making VMS pre-landing notifications would be 25 min and $5. Herring carriers are estimated to take an average of 4 trips per year, so the total annual burden estimate for a herring carrier making VMS pre-landing notifications would be 20 min and $4. The proposed gear declaration would apply to limited access herring vessels. There would be no additional reporting burden associated with the gear declaration because it would only be an additional field added to the existing VMS pre-trip notification requirement, approved under OMB 0648–0202.

Amendment 5 would allow vessels to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. Vessels may declare a herring carrier trip via VMS, if they already have and maintain a VMS, or continue to request an LOA. There would be no additional reporting burden associated with this measure because both the LOA and the VMS activity declaration are existing requirements for herring vessels.

Amendment 5 would increase the reporting burden for measures designed to improve at-sea sampling by NMFS-approved observers. A subset of herring vessels are currently required to notify NMFS to request an observer, and this action proposes to expand that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. This pre-trip observer notification requirement is estimated to affect 156 additional vessels. Vessels would be required to call NMFS to request an observer at least 48 hr prior to beginning a herring trip. The phone call is estimated to take 5 min to complete and is free. If a vessel has already contacted NMFS to request an observer and then decides to cancel that fishing trip, Amendment 5 would require that vessel to notify NMFS of the trip cancelation. The call to notify NMFS of a cancelled trip is estimated to take 1 min to complete and is free. If a vessel takes an estimated 25 trips per year, the total annual reporting burden associated with the pre-trip observer notification would be 2 hr 30 min.

Amendment 5 would require a released catch affidavit for limited access vessels that discard catch before it had been made available to an observer for sampling (slipped catch). The reporting burden for completion of the released catch affidavit is estimated to average 5 min, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The cost associated with the affidavit is the postage to mail the form to NMFS ($0.45). The affidavit requirement would affect an estimated 93 limited access herring vessels. If those vessels slipped catch once per trip with an observer onboard, and took an estimated 38 trips per year, the total annual reporting burden for the released catch affidavit would be 3 hr 10 min and $17.

Amendment 5 would also require vessels fishing with midwater trawl gear in Groundfish Closed Areas to complete

a released catch affidavit if catch is discarded before it is brought aboard the vessel and made available for sampling by an observer. At this time, there are no known Category D vessels that fish with midwater trawl gear; therefore, there is no additional reporting burden, beyond that described above, for the released catch affidavit associated with Groundfish Closed Areas.

Amendment 5 would require herring dealers to document, for each transaction, how they estimate the relative composition of catch, if catch is not sorted by species. This requirement would apply to all transactions involving the sale of herring and would be in addition to the existing dealer reporting requirements. The additional reporting burden of documenting relative species composition for each of the above types of transactions is expected to take 5 min per transaction. In April 2013, there were 262 entities that held either a herring dealer (260) or herring at-sea processor permit (2). The new Herring At-Sea Dealer Permit for herring carriers that sell fish may affect up to 25 additional entities. In total, an estimated 287 herring dealers may be required to report relative species composition. Dealers make an average of 3,000 transactions per year. Therefore, the annual burden associated of documenting relative species composition for each herring dealer is estimated to be 250 hr.

Amendment 5 would require that when vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, vessels must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow. NMFS expects that the vessel operator would do this for each trip, and not on a tow by tow basis. Vessel operators should have this information recorded and available to report to the observer, so NMFS estimates the response to take 1 min and it would not have any associated cost since it would be a verbal notification for the observer to record.

Amendment 5 would require 100-percent observer coverage on Category A and B herring vessels, coupled with a $325 per day contribution by industry. This proposed industry-funded observer program would be effective 1 year following the implementation of Amendment 5. There are an estimated 42 Category A and B vessels in the herring fishery. NMFS estimates that each vessel spends an average of 42 days per year at sea. Therefore, the annual cost associated with carrying an NMFS-approved observer for a Category A or B vessel is estimated to be $13,650.

Under the proposed industry-funded observer program, Category A and B vessels would be required to contact an observer service provider to request an observer. An estimated 42 vessels would be subject to this requirement. If those vessels took an estimated 25 trips per year and the call to the observer service provide took an estimated 10 min to complete and cost $1, the annual reporting burden of the proposed notification requirement is estimated to be 4 hr and 10 min and $25. If an observer service provide had no observer available, Category A and B vessels would be required to notify NMFS to request an observer waiver. The likelihood of an observer not being available is anticipated to be low. Therefore, if on 2 occasions the vessels needed to contact NMFS to request a waiver, and the call took an estimated 5 min to complete and was free, the annual reporting burden to request a waiver is estimated to be 10 min.

NMFS expects that additional observer service providers may apply for certification under the observer certification procedures found at 50 CFR 648.11(h). NMFS expects that 3 additional providers may apply for certification. In addition, existing providers, and the 3 potential additional providers, would be required to submit additional reports and information required of observer service providers as part of their certification. NMFS expects that 6 providers would be subject to these new requirements. Observer service providers must comply with the following requirements, submitted via email, fax, or postal service: Submit applications for approval as an observer service provider; formally request observer training by NEFOP; submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hr of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is ''in service.'' The regulations would also require observer service providers to submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties as well as all contracts between the service provider and entities requiring observer services for review to NMFS. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers. NMFS expects that all of these reporting requirements combined are expected to take 1,734 hr of response time per year for a total annual cost of $25,363 for the affected observer providers. The following table provides the detailed time and cost information for each response item.

Observer provider requirements	Number of entities	Total Number of items	Time (hours) per response	Total time burden (hours)	Cost per response	Annual cost
Observer deployment report by email ...	6	1500	0.167	251	$0	$0
Observer availability report by email	6	900	0.167	150	0	0
Safety refusals by email	6	150	0.5	75	0	0
Raw observer data by express mail	6	1500	0.083	125	13	19,500
Observer debriefing	6	420	2	840	12	5,040
Other reports	6	210	0.5	105	0	0
Biological samples	6	1500	0.083	125	0.50	750
New application to be a service provider	3	3	10	30	0.44	1
Applicant response to denial	1	1	10	10	0	0
Request for observer training	3	6	0.5	3	1.80	11
Rebuttal of pending removal from list of approved observer providers	1	1	8	8	0	0
Observer contact list updates	3	36	0.083	3	0	0
Observer availability updates	3	36	0.017	1	0	0
Service provider material submissions ..	6	12	0.5	6	2.50	30

Observer provider requirements	Number of entities	Total Number of items	Time (hours) per response	Total time burden (hours)	Cost per response	Annual cost
Service provider contracts	6	12	0.5	6	2.50	30
Total				1736		25,363

Public comment is sought regarding the following: Whether this proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Adjustments to the Fishery Management Program

Amendment 5 proposes to revise several existing fishery management provisions, such as regulatory definitions and VMS requirements, and to establish new provisions, such as a new dealer permit and the mechanism to consider a river herring catch cap in a future framework, to better administer the herring fishery. Two alternatives, the proposed action and the no action alternative, were considered for each of these provisions. Because of the administrative nature of the proposed measures, the economic impacts of selecting the proposed action relative to the no action alternative is anticipated to have a neutral or low positive economic impact on fishery-related businesses and communities. Revising the regulatory definitions for transfer at-sea and offload for the herring fishery would reduce any confusion and/or errors related to catch reporting, which may, in turn, improve reporting compliance, help ensure data accuracy and completeness, and lessen the likelihood of double counting herring catch. Establishing an At-Sea Herring Dealer Permit for herring carrier vessels that sell herring at sea may improve catch monitoring by allowing catch reported by harvesting vessels to be matched with sales of herring by herring carrier vessels. Expanding vessel requirements related to observer sampling would help ensure safe sampling and improve the quality of monitoring data. Proposed measures that result in improved catch monitoring are anticipated to have low positive economic impacts because they may, over the long-term, result in less uncertainty and, ultimately, result in additional harvest being made available to the herring industry. Specifying that vessels working cooperatively in the herring fishery would be subject to the most restrictive possession limit associated with the permits issued to the vessels may improve enforcement of herring possession limits in multi-vessel operations. Eliminating the VMS power-down provision for herring vessels would make provisions for herring vessels more consistent with other FMPs and would enhance enforcement of the herring regulations. Lastly, establishing the mechanism to consider a river herring catch cap in a future framework would be a potential way to evaluate directly controlling river herring mortality in the herring fishery.

Amendment 5 proposes that herring carriers be allowed to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. Currently, herring carriers enroll as herring carriers with an LOA. When vessels are enrolled as carriers they cannot have fishing gear aboard, fish for any species, or carry any species other than herring. The LOA has a minimum enrollment period of 7 days. In addition to the proposed action, Amendment 5 considered the no action alternative (herring carriers enroll with an LOA) and a non-selected alternative (vessels must declare herring carrier trips via VMS). Both the proposed action and the non-selected alternative would provide increased operational flexibility at the trip level as compared to the no action alternative, without the minimum 7-day enrollment period. However, the non-selected alternative would require vessels that did not already use a VMS to purchase and maintain a VMS. In 2010, approximately 20 vessels that were not required to maintain a VMS aboard their vessels requested herring carrier LOAs. The cost of purchasing a VMS ranges between $1,700 and $3,300, and operating costs are approximately $40 to $100 per month. The proposed action has the potential for low positive impacts for fishery-related businesses and communities resulting from the increased operational flexibility of allowing trip-by-trip planning in comparison to the no action alternative. The non-selected alternative and the proposed action would both have the potential for low positive benefits from allowing trip-by-trip planning. In comparison to the proposed action, the non-selected alternative may have a low negative impact by requiring vessels to purchase and maintain a VMS, but that impact would be minimal because of the small number of vessels likely affected. Overall, the proposed action is anticipated to have the greatest positive impact on fishery-related business and communities in comparison the no action and non-selected alternative, but that impact is low.

Amendment 5 proposes that existing pre-trip observer notification and VMS pre-landing notification requirements be expanded to additional herring vessels and that a gear declaration be added to the existing VMS activity declaration. The intent of these requirements is: (1) To better inform NEFOP of when/where herring fishing activity may occur and assist in the effective deployment of observers; (2) to better inform NMFS OLE of when/where vessels will be landing their catch land to facilitate monitoring of the landing and/or catch; and (3) to provide OLE with trip-by-trip information on the gear being fished to improve the enforcement of herring gear regulations. Amendment 5 considered only one alternative to the proposed action, the no action alternative. The no action alternative would not impose additional trip notification requirements, therefore there would be no additional impacts on fishery-related business and communities. Any impact to the herring fishery because of the proposed action would be through increased administrative and regulatory burden, but the number of vessels

affected and the actual cost of the additionally reporting is low. In comparison to the no action alternative, the proposed action is anticipated to result in improved catch monitoring and enforcement of herring regulations, translating into low positive impacts for fishery-related businesses and communities.

Dealer Reporting Requirements

Amendment 5 would require herring dealers to accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document how they estimate relative species composition in each dealer report. Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the proposed action does not specify how fish are to be weighed, the proposed action is not anticipated to change dealer behavior and, therefore, is expected to have neutral impacts in comparison to the no action alternative. Amendment 5 considered three alternatives to the proposed action, the no action alternative, Option 2A, and Option 2C. Option 2A would require that relative species composition be documented annually and Option 2C would require that a vessel representative confirm each dealer report. Overall, relative to the no action alternative, the proposed action and Option 2A may have a low negative impact on dealers due to the regulatory burden of documenting how species composition is estimated. In comparison, Option 2C may have a low positive impact on fishery participants, despite an increased regulatory burden, if it minimizes any loss of revenue due to data errors in the dealer reports and/or the tracking of herring catch.

Areas 2/3 Open Access Herring Permit

Amendment 5 would establish a new open access herring permit with a 20,000-lb (9-mt) herring possession limit in herring management Areas 2 and 3 for limited access mackerel vessels. Amendment 5 considered two alternatives to the proposed action, the no action alternative (6,600-lb (3-mt) herring possession limit) and the non-selected alternative (10,000-lb (4.5-mt) herring possession limit). The impact of the proposed action on fishery-related businesses and communities is expected to be more positive than that of the no action alternative or the non-selected alternative. There is significant overlap between the mackerel and herring fisheries. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The analysis predicts that approximately 60 vessels would be eligible for the new open access herring permit. In comparison to the no action and non-selected alternatives, the proposed action could decrease the occurrence of regulatory discards and increase revenue for vessels that are eligible for this permit.

2. Adjustments to the At-Sea Catch Monitoring

Amendment 5 would require 100-percent observer coverage on Category A and B vessels coupled with an industry contribution of $325 per day. Amendment 5 considered three alternatives to the proposed action (Alternative 2), the no action alternative (existing SBRM process for determining observer coverage levels), Alternative 3 (modified SBRM process for determining observer coverage levels), and Alternative 4 (Council-specified targets for observer coverage levels). Additionally, for each of the action alternatives, Amendment 5 considered funding options, NMFS funding (no action alternative) versus NMFS and industry funding, and observer service provider options, all observer service providers subject to the same requirements (no action alternative) versus states as authorized observer service providers. The proposed action specifies the highest level of observer coverage in comparison to the no action alternative and the non-selected alternatives. The specific coverage levels under the no action alternative and the non-selected alternatives are unknown at this time, because they would depend on an analysis of fishery data from previous years, but coverage levels under these alternatives are expected to be less than 100 percent. The proposed action specifies an industry contribution of $325 per day. For Category A and B vessels, a contribution of $325 is estimated to be 3–6 percent of daily revenue and 8–45 percent of daily operating costs. The other non-selected alternatives (no action, Alternative 3, Alternative 4) do not specify an industry contribution, so a comparison of direct costs to industry across alternatives is not possible. The proposed action is likely to have the largest negative impact on fishery-related businesses and communities of any alternatives due to the cost of observer coverage, potentially resulting in less effort and lower catch. In the long-term, increased monitoring and improved data collections for the herring fishery may translate into improved management of the herring fishery that would benefit fishery-related businesses and communities. Options for observer service providers are likely to have neutral impacts on fishery-related businesses across alternatives.

Amendment 5 would require limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. If catch was slipped before it was sampled by an observer, it would count against a slippage cap and require a released catch affidavit to be completed. If a slippage cap was reached, a vessel would be required to return to port immediately following any additional slippage events. Amendment 5 considered four alternatives to the proposed action, the no action alternative, Option 2, Option 3, and Option 4. These non-selected alternatives include various elements of the proposed action, including a requirement to complete a released catch affidavit (Option 2), requirement to bring all catch aboard and make it available to an observer for sampling (Option 3), and catch deduction for slipped catch (Option 4). The no action alternative would not establish slippage prohibitions or slippage caps, but it would maintain the existing sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I.

Negative impacts to the herring fishery associated with all these alternatives include increased time spent pumping fish aboard the vessel to be sampled by an observer, potential decrease in vessel safety during poor operating conditions, and the administrative burden of completing a released catch affidavit. The penalties associated with slippage vary slightly across the alternatives. A deduction of 100,000 lb (45 mt) per slippage event in each management area (Option 4) would reduce the harvest available to fishing vessels and a trip termination (proposed action) after a slippage event would result in higher costs for fishing vessels, especially those fishing in offshore areas. The overall impacts of the options that propose catch deductions (Option 4) and trip termination (proposed action) are similar and, in comparison to the no action alternative, are negative. Costs associated with herring fishing trips are high, particularly with the current cost of fuel. Trips terminated prematurely could result in unprofitable trips, leaving not only the owners with debt, but crewmembers without income and negative impacts on fishery-related businesses and communities.

3. Measures To Address River Herring Interactions

Amendment 5 would establish River Herring Monitoring/Avoidance Areas. Amendment 5 considered two alternatives to the proposed action, the no action alternative and a non-selected alternative (establishing River Herring Protection Areas). Relative to the no action alternative, the proposed action and the non-selected alternative are expected to have a negative impact on fishery-related businesses and communities due to the costs associated with increased monitoring and/or area closures. The impact of the River Herring Areas would depend on the measures applied to the areas, such as increased monitoring, requirement that catch be brought aboard the vessels for sampling by observers, and closures. The proposed action, requiring 100-percent observer coverage in the River Herring Monitoring/Avoidance Areas, would likely have the largest negative impact on fishery-related businesses and communities, especially with the industry required to pay $325 per day. The non-selected option requiring all catch to be brought aboard would have a similar negative impact if 100-percent observer coverage was required. The non-selected option implementing either increased monitoring or closures after a river herring catch trigger was reached would have less impact on fishery-related businesses and communities than the proposed action, because the additional requirements would not become effective until the catch trigger is reached. The proposed action also includes support for the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring bycatch with real-time information on river herring distribution and herring fishery encounters. This aspect of the proposed action has the potential to mitigate some of the negative impacts of the proposed action by developing river herring bycatch avoidance measures in cooperation with the fishing industry.

4. Measures To Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 would expand the existing monitoring and sampling requirements for Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. Amendment 5 considered three alternatives to the proposed action (Alternative ¾), the no action alternative (maintain existing sampling requirements for Closed Area I), Alternative 2 (removing existing sampling requirements for Closed Area I), and Alternative 5 (prohibiting fishing with midwater trawl gear in the Closed Areas). Compared to the no action alternative and the non-selected alternatives, the proposed action would have the highest negative impact on fishery participants because of the following requirements: (1) 100-percent observer coverage; (2) bringing all catch aboard for sampling; (3) leaving the Closed Areas if catch is released before it has been sampled by an observer; (4) and completing a released catch affidavit. The midwater trawl fleet may avoid the Closed Areas if fishing in the Areas becomes too expensive. If observers are not available, the impact of the proposed action would be similar to Alternative 5 that would close the Closed Areas to midwater trawl vessels. While a portion of the herring revenue has been shown to come from the Closed Areas, that revenue is not expected to completely disappear. Instead, the midwater fleet would likely fish in other areas, this would be a potential additional cost for the fleet if those areas are less productive than the Closed Areas.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 30, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, definitions of ''Atlantic herring carrier'' and ''Atlantic herring dealer'' are revised and definitions of ''Atlantic herring offload,'' ''Atlantic herring transfer at-sea'' and ''Slippage in the Atlantic herring fishery'' are added in alphabetical order to read as follows:

* * * * *

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel or has declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait;

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port; or

(3) Any person owning or operating an Atlantic herring carrier that sells Atlantic herring received at sea or in port from a vessel issued a Federal Atlantic herring permit.

* * * * *

Atlantic herring offload means to remove, begin to remove, to pass over the rail, or otherwise take Atlantic herring off of or away from any vessel issued an Atlantic herring permit for sale to either a permitted at-sea Atlantic herring dealer or a permitted land-based Atlantic herring dealer.

* * * * *

Atlantic herring transfer at-sea means a transfer from the hold, deck, codend, or purse seine of a vessel issued an Atlantic herring permit to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, to a permitted transshipment vessel, or to another permitted Atlantic herring vessel. Transfers between vessels engaged in pair trawling are not herring transfers at-sea.

* * * * *

Slippage in the Atlantic herring fishery means catch that is discarded prior to it being brought aboard a vessel issued an Atlantic herring permit and/or prior to making it available for sampling and inspection by a NMFS-approved observer. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water.

* * * * *

■ 3. In § 648.4, paragraphs (a)(10)(ii) and (a)(10)(v) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) * * *

(ii) *Atlantic herring carrier.* An Atlantic herring carrier must have been

issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.10(m)(1). On Atlantic herring carrier trips under either the letter of authorization or an Atlantic herring carrier VMS trip declaration, an Atlantic herring carrier is exempt from the VMS, IVR, and VTR vessel reporting requirements, as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. If not declaring an Atlantic herring carrier trip via VMS, an Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator and there is a minimum enrollment period of 7 calendar days for a letter of authorization. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not conduct fishing activities, except for purposes of transport, or possess any fishing gear on board the vessel, and they must be used exclusively as an Atlantic herring carrier vessel and must carry observers if required by NMFS. While operating under a valid letter of authorization or Atlantic herring carrier VMS trip declaration, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not possess, transfer, or land any species other than Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

* * * * *

(v) *Open access herring permits.* A vessel that has not been issued a limited access Atlantic herring permit may obtain an All Areas open access Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip from all herring management areas, limited to one landing per calendar day, and/or an Areas 2/3 open access Atlantic herring permit to possess up to 20,000 lb (9 mt) of herring per trip from Herring Management Areas 2 and 3, limited to one landing per calendar day, provided the vessel has also been issued a Limited Access Atlantic Mackerel permit, as defined in paragraph (a)(5)(iii) of this section.

* * * * *

■ 4. In § 648.7, paragraph (a)(1)(iv) is added, and paragraphs and (b)(2)(i) introductory text, (b)(3)(i) introductory text, (b)(3)(i)(A), and (b)(3)(i)(C)(*2*) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(iv) *Dealer reporting requirements for Atlantic herring.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers issued a permit for Atlantic herring must accurately weigh all fish. If dealers do not sort by species, dealers are required to document for each report submitted how the species composition of catch is determined.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring owners or operators issued an All Areas open access permit.* The owner or operator of a vessel issued an All Areas open access permit to fish for herring must report catch (retained and discarded) of herring to an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(3) * * *

(i) *Atlantic herring owners or operators issued a limited access permit or Areas 2/3 open access permit.* The owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring must report catches (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit or Areas 2/3 open access permit must submit an Atlantic herring catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

* * * * *

(C) * * *

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel transfers catch to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

* * * * *

■ 5. In § 648.10, paragraphs (b)(8) and (c)(2)(i)(B) are revised, paragraph (c)(2)(i)(C) is removed and reserved, and paragraph (m) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(8) A vessel issued a limited access herring permit (i.e., All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit), or a vessel issued an Areas 2/3 open access herring permit, or a vessel declaring an Atlantic herring carrier trip via VMS.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), an Atlantic sea scallop limited access permit, or an Atlantic herring permit, the vessel owner signs out of the VMS program for

a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

(m) *Atlantic herring VMS notification requirements.* (1) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit intending to declare into the herring fishery or a vessel issued an Atlantic herring permit and intending to declare an Atlantic herring carrier trip via VMS must notify NMFS by declaring a herring trip with the appropriate gear code prior to leaving port at the start of each trip in order to harvest, possess, or land herring on that trip.

(2) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit or a vessel that declared an Atlantic herring carrier trip via VMS must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 6. In § 648.11, paragraphs (h)(1), (h)(3)(vi), (h)(3)(ix), (h)(4)(i)-(iii), (h)(5)(i), (h)(5)(ii)(B) and (C), (h)(5)(iii), (h)(5)(vi), (h)(5)(viii)(A), (h)(7) introductory text, (i)(2), and (i)(3)(ii) are revised, and paragraph (m) is added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) * * *

(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop or Atlantic herring fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop and Atlantic herring vessel owners and shall be posted on NMFS' Web page, as specified in paragraph (g)(4) of this section.

* * * * *

(3) * * *

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop or Atlantic herring fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

* * * * *

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

* * * * *

(4) * * *

(i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop or Atlantic herring fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop or Atlantic herring fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop or Atlantic herring fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) * * *

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop or Atlantic herring fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop or Atlantic herring fishery, unless the observer service provider does not have an available observer within 24 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

* * * * *

(ii) * * *

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop or Atlantic herring vessel or to attend a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop and Atlantic Herring Observer Program, prior to any deployment and/or prior to NMFS observer certification training; and

* * * * *

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The

telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop or Atlantic herring fishery.

* * * * *

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

* * * * *

(viii) * * *

(A) An observer service provider may refuse to deploy an observer on a requesting scallop or Atlantic herring vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a scallop vessel or within 24 hr of receiving a request for an observer from an Atlantic herring vessel.

* * * * *

(7) Removal of observer service provider from the list of approved observer service providers. An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop or Atlantic herring trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

* * * * *

(i) * * *

(2) *Observer training.* In order to be deployed on any scallop or Atlantic herring vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop or Atlantic Herring High Volume Fisheries Certification/Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop or Atlantic herring vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) * * *

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop or Atlantic herring vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

* * * * *

(m) *Atlantic herring observer coverage.* (1) *Pre-trip notification.* At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit or a vessel issued an Areas 2/3 Open Access Herring Permit on a declared herring trip or a vessel issued an All Areas Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), and herring carriers must provide notice of the following information to NMFS: Vessel name, permit category, and permit number; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; gear type; target species; and intended area of fishing, including whether the vessel intends to engage in fishing in the Northeast Multispecies Closed Areas, Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(2) When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow.

(3) *Sampling requirements.* In addition to the requirements at paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a Limited Access Herring Permit on which a NMFS-approved observers is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and

grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(iv) Visual access to net/codend or purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents should be brought on board. If bringing the codend on board is not possible, the vessel operator must ensure that the observer can see the codend and its contents as clearly as possible before releasing its contents.

(4) *Measures to address slippage.* (i) No vessel issued a limited access Atlantic herring permit and carrying a NMFS-approved observer may release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If fish are released prior to being brought on board the vessel due to any of the above exceptions, the vessel operator must:

(A) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(5) The following observer coverage requirements are effective 1 year after the effective date of Amendment 5.

(i) Vessels issued an All Areas Limited Access Herring Permit or an Areas ⅔ Limited Access Herring Permit may not fish for, take, retain, possess, or land Atlantic herring without carrying a NMFS-approved observer, unless the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of this observer requirement for that trip pursuant to paragraph (m)(5)(vi) of this section.

(ii) At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit must provide notice to NMFS if it intends to fish in the River Herring Monitoring/Avoidance Areas, described at § 648.200(f)(4), at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(iii) NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective Atlantic herring trip pursuant to paragraph (m)(1) of this section.

(iv) An owner, operator, or manager of a vessel required to carry an observer under paragraph (m)(5)(i) of this section must arrange for carrying an observer certified through the Atlantic Herring High Volume Fisheries observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section or from a state agency. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 24 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/.*

(v) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 24 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available.

(vi) NMFS/NEFOP shall issue such a waiver within 12 hr, if the conditions of paragraph (m)(5) of this section are met. A vessel may not begin the trip without being issued a waiver. All waivers for observer coverage shall be issued to the vessel by VMS so a vessel may have on board a verification of the waiver.

(vii) Vessels issued an All Areas Limited Access Herring Permit or an Areas 2/3 Limited Access Herring Permit may not fish for, take, retain, possess, or land Atlantic herring from within the River Herring Monitoring/Avoidance Areas, described at § 648.200(f)(4) without carrying a NMFS-approved observer.

(vii) Owners of vessels issued an All Areas Limited Access Herring Permit or an Areas 2/3 Limited Access Herring Permit must pay observer service providers $325 per sea day.

■ 7. In § 648.13, paragraph (f)(2)(i) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) * * *

(2) * * *

(i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it either is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii), or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS, consistent with the requirements at § 648.10(l)(1).

* * * * *

■ 8. In § 648.14, paragraphs (r)(1)(ii)(C) and (r)(1)(vii)(B) are revised, and paragraphs (r)(1)(viii)(C) and (D) and (r)(2)(viii) through (xiii) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit or the most restrictive herring possession limit associated with the permits issued to vessels working

cooperatively, including vessels pair trawling, purse seining, or transferring herring at-sea.

* * * * *

(vii) * * *

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without an Atlantic herring carrier letter of authorization from the Regional Administrator or having declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

* * * * *

(viii) * * *

(C) Fail to declare via VMS into the herring fishery by entering the appropriate herring fishery code and appropriate gear code prior to leaving port at the start of each trip to harvest, possess, or land herring, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or is intending to act as an Atlantic herring carrier.

(D) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least of 6 hr prior to landing, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or has declared an Atlantic herring carrier trip via VMS.

* * * * *

(2) * * *

(viii) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(ix) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(x) Fail to immediately leave the Northeast Multispecies Closed Areas and complete, sign, and submit an affidavit as required by § 648.202(b)(2) and (4).

(xi) Release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, unless subject to one of the exemptions defined at defined at § 648.11(m)(4)(i).

(xii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the requirements at § 648.11(m)(4)(iii)(A).

(xiii) Fail to immediately return to port after slipping catch while carrying a NMFS-approved observer when fishing with a particular gear type in a particular herring management area after NMFS has determined that the slippage cap for that particular gear type and management area has been reached, pursuant to § 648.203(c).

* * * * *

■ 9. In § 648.200, paragraph (f)(4) is added and paragraph (g) is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(f) * * *

(4) *River Herring Monitoring/Avoidance Areas.*

(i) January–February River Herring Monitoring/Avoidance Areas. The January–February River Herring Monitoring/Avoidance Areas include 4 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January–February River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;

(*2*) 43°00′ N Lat.,70°30′ W Long.;

(*3*) 42°30′ N Lat.,70°30′ W Long.;

(*4*) 42°30′ N Lat.,71°00′ W Long.; and

(*5*) 43°00′ N Lat., 71°00′ W Long.

(B) January-February River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;

(*2*) 42°00′ N Lat., 69°30′ W Long.;

(*3*) 41°30′ N Lat., 69°30′ W Long,;

(*4*) 41°30′ N Lat., 70°00′ W Long.; and

(*5*) 42°00′ N Lat., 70°00′ W Long.

(C) January–February River Herring Monitoring/Avoidance Sub-Area 3.

(*1*) 41°30′ N Lat., 72°00′ W Long.;

(*2*) 41°30′ N Lat., 71°00′ W Long.;

(*3*) 40°30′ N Lat., 71°00′ W Long.;

(*4*) 40°30′ N Lat., 72°30′ W Long.;

(*5*) The southernmost shoreline of Long Island, New York, 72°30′W Long.;

(*6*) The north-facing shoreline of Long Island, New York, 72°00′W Long.; and

(*7*) 41°30′ N Lat., 72°00′ W Long.

(*8*) Points 5 and 6 are connected following the coastline of the south fork of eastern Long Island, New York.

(D) January–February River Herring Monitoring/Avoidance Sub-Area 4

(*1*) 40°30′ N Lat., 74°00′ W Long.;

(*2*) 40°30′ N Lat., 72°30′ W Long.;

(*3*) 40°00′ N Lat., 72°30′ W Long.;

(*4*) 40°00′ N Lat., 72°00′ W Long.;

(*5*) 39°30′ N Lat., 72°00′ W Long.;

(*6*) 39°30′ N Lat., 73°30′ W Long.;

(*7*) 40°00′ N Lat., 73°30′ W Long.;

(*8*) 40°00′ N Lat., 74°00′ W Long.; and

(*9*) 40°30′ N Lat., 74°00′ N Long.;

(*10*) Points 8 and 9 are connected following 74°W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) March–April River Herring Monitoring/Avoidance Areas. The March–April River Herring Monitoring/Avoidance Areas include 5 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March–April River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;

(*2*) 43°00′ N Lat., 70°30′ W Long.;

(*3*) 42°30′ N Lat., 70°30′ W Long.;

(*4*) 42°30′ N Lat., 71°00′ W Long.; and

(*5*) 43°00′ N Lat., 71°00′ W Long.

(B) March–April River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;

(*2*) 42°00′ N Lat., 69°30′ W Long.;

(*3*) 41°30′ N Lat., 69°30′ W Long.;

(*4*) 41°30′ N Lat., 70°00′ W Long.; and

(*5*) 42°00′ N Lat., 70°00′ W Long.

(C) March–April River Herring Monitoring/Avoidance Sub-Area 3.

(*1*) 41°00′ N Lat., The easternmost shoreline of Long Island, New York;

(*2*) 41°00′ N Lat., 71°00′ W Long.;

(*3*) 40°30′ N Lat., 71°00′ W Long.;

(*4*) 40°30′ N Lat., 71°30′ W Long.;

(*5*) 40°00′ N Lat., 71°30′ W Long.;

(*6*) 40°00′ N Lat., 72°30′ W Long.;

(*7*) The southernmost shoreline of Long Island, New York, 72°30′W Long.; and

(*8*) 41°00′ N Lat., The easternmost shoreline of Long Island, New York.

(*9*) Points 7 and 8 are connected following the southern shoreline of Long Island, New York.

(D) March–April River Herring Monitoring/Avoidance Sub-Area 4.

(*1*) 40°00′ N Lat., 73°30′ W Long.;

(*2*) 40°00′ N Lat., 72°30′ W Long.;

(*3*) 39°00′ N Lat., 72°30′ W Long.;

(*4*) 39°00′ N Lat., 73°30′ W Long.; and

(*5*) 40°00′ N Lat., 73°30′ W Long.

(E) March–April River Herring Monitoring/Avoidance Sub-Area 5.

(*1*) 40°30′ N Lat., 74°00′ W Long.;

(*2*) 40°30′ N Lat., 73°30′ W Long.;

(*3*) 40°00′ N Lat., 73°30′ W Long.;

(*4*) 40°00′ N Lat., 74°00′ W Long.; and

(*5*) 40°30′ N Lat., 74°00′ W Long.

(*6*) Points 4 and 5 are connected following 74°W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) May–June River Herring Monitoring/Avoidance Areas. The May–June River Herring Monitoring/

Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May–June River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°00′ N Lat., 69°30′ W Long.;
(*2*) 44°00′ N Lat., 69°00′ W Long.;
(*3*) 43°30′ N Lat., 69°00′ W Long.;
(*4*) 43°30′ N Lat., 69°30′ W Long.; and
(*5*) 44°00′ N Lat., 69°30′ W Long.

(B) May–June River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;
(*2*) 42°00′ N Lat., 69°30′ W Long.;
(*3*) 41°30′ N Lat., 69°30′ W Long.;
(*4*) 41°30′ N Lat., 70°00′ W Long.; and
(*5*) 42°00′ N Lat., 70°00′ W Long.

(iv) July–August River Herring Monitoring/Avoidance Areas. The July–August River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July–August River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°00′ N Lat., 70°00′ W Long.;
(*2*) 44°00′ N Lat., 69°30′ W Long.;
(*3*) 43°00′ N Lat., 69°30′ W Long.;
(*4*) 43°00′ N Lat., 70°00′ W Long.; and
(*5*) 44°00′ N Lat., 70°00′ W Long.
(*6*) The boundary from Points 4 to 5 excludes the portions Maquoit and Middle Bays east of 70°00′W Long.

(B) July–August River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 44°00′ N Lat., 69°00′ W Long.;
(*2*) 44°00′ N Lat., 68°30′ W Long.;
(*3*) 43°30′ N Lat., 68°30′ W Long.;
(*4*) 43°30′ N Lat., 69°00′ W Long.; and
(*5*) 44°00′ N Lat., 69°00′ W Long.

(v) September–October River Herring Monitoring/Avoidance Areas. The September–October River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September–October River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°30′ N Lat., 68°00′ W Long.;
(*2*) 44°30′ N Lat., 67°00′ W Long.;
(*3*) 44°00′ N Lat., 67°00′ W Long.;
(*4*) 44°00′ N Lat., 68°00′ W Long.; and
(*5*) 44°30′ N Lat., 68°00′ W Long.

(B) September–October River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 43°00′ N Lat., 71°00′ W Long.;
(*2*) 43°00′ N Lat., 70°30′ W Long.;
(*3*) 42°30′ N Lat., 70°30′ W Long.;
(*4*) 42°30′ N Lat., 71°00′ W Long.; and
(*5*) 43°00′ N Lat., 71°00′ W Long.

(vi) November–December River Herring Monitoring/Avoidance Areas. The November–December River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November–December River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;
(*2*) 43°00′ N Lat., 70°00′ W Long.;
(*3*) 42°00′ N Lat., 70°00′ W Long.;
(*4*) 42°00′ N Lat., 69°30′ W Long.;
(*5*) 41°30′ N Lat., 69°30′ W Long.;
(*6*) 41°30′ N Lat., 70°00′ W Long.;
(*7*) The south-facing shoreline of Cape Cod, MA, 70°00′ W Long.;
(*8*) 42°00′ N Lat., The west-facing shoreline of Cape Cod, MA Long.;
(*9*) 42°00′ N Lat., 70°30′ W Long.;
(*10*) 42°30′ N Lat., 70°30′ W Long.;
(*11*) 42°30′ N Lat., 71°00′ W Long.; and
(*12*) 43°00′ N Lat., 71°00′ W Long.
(*13*) Points 7 and 8 are connected following the coastline of Cape Cod, MA.

(B) November–December River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 41°30′ N Lat., 72°00′ W Long.;
(*2*) 41°30′ N Lat., 70°00′ W Long.;
(*3*) 40°30′ N Lat., 70°00′ W Long.;
(*4*) 40°30′ N Lat., 70°30′ W Long.;
(*5*) 41°00′ N Lat., 70°30′ W Long.;
(*6*) 41°00′ N Lat., 72°00′ W Long.; and
(*7*) 41°30′ N Lat., 72°00′ W Long.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;
(2) Possession limits;
(3) River Herring Monitoring/Avoidance Areas;
(4) River herring catch caps; and
(5) Provisions related to industry-funded catch monitoring program (including cost sharing provisions, service provider requirements, waivers).

■ 10. In § 648.202, paragraph (b) is added to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) *Fishing in Northeast Multispecies Closed Areas.* (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-approved observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If fish are released prior to being brought aboard the vessel due to any of the above exceptions, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Midwater Trawl Released Codend Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

■ 11. In § 648.203, paragraph (c) is added to read as follows:

§ 648.203 Gear restrictions.

* * * * *

(c) *Slippage cap.* If NMFS determines that there have been 10 slippage events in a management area by gear type, including midwater trawl, bottom trawl, or purse seine, by vessels issued limited access Atlantic herring permits and carrying NMFS-approved observers, limited access vessels using that particular gear type that subsequently slip catch in that management area while carrying a NMFS-approved

observer must immediately stop fishing and return to port after each slippage event. NMFS shall implement these restrictions in accordance with the APA.

■ 12. In § 648.204, paragraph (b) is revised to read as follows:

§ 648.204 Possession restrictions.

* * * * *

(b) Each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a valid herring permit to fish for, possess, or land Atlantic herring and are subject to the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively.

■ 13. Section 648.205 is revised to read as follows:

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel or vessel issued an Areas 2/3 Open Access Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. (See § 648.10(m) for VMS notification requirements.)

■ 14. In § 648.206, paragraphs (b)(30) and (b)(31) are revised, and paragraphs (b)(32) through (39) are added to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(30) AMs;

(31) Changes to vessel trip notification and declaration requirements;

(32) Adjustments to measures to address net slippage, including sampling requirements, exceptions for trip termination threshold, trip termination threshold amounts/divisions by area and/or gear type;

(33) Adjustments to requirements for observer coverage levels;

(34) Provisions related to industry-funded catch monitoring program (including cost allocation provisions, service provider requirements, waivers);

(35) River Herring Monitoring/Avoidance Areas;

(36) Provisions for river herring incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s); the threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s).

(37) Changes to criteria/provisions for access to Northeast Multispecies Closed Areas;

(38) River herring catch caps; and

(39) Any other measure currently included in the FMP.

* * * * *

[FR Doc. 2013–13172 Filed 5–31–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BB76

Fisheries of the Exclusive Economic Zone Off Alaska; Fisheries of the Gulf of Alaska; Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council has submitted Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 89 would modify the FMP in two ways, if approved. First, Amendment 89 would establish a protection area in Marmot Bay, northeast of Kodiak Island, and close that area to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear to reduce bycatch of Tanner crab (*Chionoecetes bairdi*) in Gulf of Alaska (GOA) groundfish fisheries. Second, Amendment 89 would require the use of modified nonpelagic trawl gear when directed fishing for flatfish in the Central Regulatory Area of the GOA and would provide authority in the FMP to specify in regulation the modifications that are required to raise portions of the gear off the sea floor. The use of modified nonpelagic trawl gear in these fisheries would reduce the unobserved injury and mortality of Tanner crab and the potential adverse impacts of nonpelagic trawl gear on bottom habitat. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law. Comments from the public are encouraged.

DATES: Comments on the amendment must be received on or before August 2, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0294, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0294,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 89, the EA/RIR/IFRA prepared for the Area Closures for Tanner Crab Protection in Gulf of Alaska Groundfish Fisheries (Area Closures EA/RIR/IRFA), and the EA/RIR/IRFA for Trawl Sweep Modification in the Flatfish Fishery in the Central Gulf of Alaska (Trawl Sweep EA/RIE/IRFA) are available from *http://*

www.regulations.gov or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 89 to the FMP is available for public review and comment.

Background

Since the implementation of the FMP in 1978, the Council and NMFS have adopted measures intended to control the catch of species taken incidentally in groundfish fisheries. Certain species are designated as ''prohibited'' in the FMP, because they are the target of other fully utilized domestic fisheries. The FMP and implementing regulations at § 679.21 require that catch of these species and species groups must be avoided while fishing for groundfish, and when incidentally caught, they must be immediately returned to sea with a minimum of injury. These species include Pacific halibut, Pacific herring, Pacific salmon, steelhead trout, king crab, and Tanner crab. The incidental catch of prohibited species under § 679.21 require prohibited species to be discarded at sea with minimum injury, or retained but not sold under the Prohibited Species Donation Program at § 679.26. The Magnuson-Stevens Act refers to species which must be discarded by regulation as ''bycatch.''

The Council has recommended in both the Bering Sea and Aleutian Islands Management Area (BSAI) and GOA, and NMFS has implemented, measures to: (1) Close areas with a high occurrence of prohibited species, or where there is a relatively high level of prohibited species catch; (2) require the use of gear specifically modified to minimize prohibited species catch and effects on bottom habitat; and (3) establish prohibited species catch (PSC) limits in specific Alaska groundfish fisheries. A summary of these measures is in Section 1 of the Area Closures EA/RIR/IRFA (see **ADDRESSES**).

The Council has recommended, and NMFS has implemented, closure areas to protect king crab stock in the GOA. These area closures limit the use of gear that fish on or close to the sea floor, such as nonpelagic trawl and pot gears, to minimize the bycatch of crab species and adverse impacts on crab habitat. Specifically, in the Central GOA, regulations implementing Amendment 15 to the FMP (52 FR 12183, April 15, 1987) established closures near Kodiak, AK, to protect king crab habitat. These closure areas were subsequently expanded and revised under regulations implementing Amendment 26 to the FMP (58 FR 503, January 6, 1993). Time and areas closures to the use of nonpelagic trawl gear have been shown to reduce injury and mortality to crab species in both the BSAI and GOA. For this reason, NMFS is proposing closure to vessels using trawl gear except for vessels directed fishing for pollock with pelagic trawl gear to protect Tanner crab in a portion of the Central GOA.

Recently, NMFS implemented regulations that require the use of modified nonpelagic trawl gear in the Bering Sea flatfish fisheries to reduce the bycatch of crab and minimize the impact of this gear on bottom habitat. See Amendment 94 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) for additional detail (75 FR 61642, October 6, 2010). NMFS is proposing to also require the use of raised trawl sweeps in the GOA.

In 2005, the Council initiated a series of reviews on prohibited species bycatch in the GOA groundfish fisheries. These reviews led the Council to focus action on two prohibited species and two regulatory areas with potentially high bycatch levels: Chinook salmon (*Oncorhynchus tshawytscha*) bycatch in pollock fisheries in the Central and Western GOA, and Tanner crab bycatch in the Central GOA. The Council addressed Chinook salmon bycatch in the GOA through Amendment 93 to the FMP (77 FR 42629, July 20, 2012). In October 2009, the Council initiated an analysis of potential protection measures for Tanner crab in the Central GOA. In April 2010, the Council initially reviewed alternative bycatch control measures, subsequently revised and refined these alternatives, and in October 2010, recommended that the FMP be amended to establish a protection area in Marmot Bay, northeast of Kodiak Island, and that the area be closed to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear.

When the Council recommended the Marmot Bay Area closure in October 2010, it directed its staff to review the practicality of requiring the use of modified nonpelagic trawl gear by vessels directed fishing for flatfish in the Central GOA. The Council recommended this review as a first step in considering additional measures to reduce the potential adverse effects of nonpelagic trawl gear on bottom habitat and to reduce unobserved Tanner crab injury and mortality. The Council's recommendation was based on past experience with the use of modified nonpelagic trawl gear to reduce potential adverse effects on bottom habitat in Bering Sea flatfish fisheries. In 2008, NMFS, the NMFS Office of Law Enforcement, and the fishing industry tested modified nonpelagic fishing gear in the Bering Sea under normal fishing conditions to determine if this gear could be used safely and effectively in ways that may reduce potential adverse effects on bottom habitat while maintaining effective catch rates for flatfish target species. These initial tests were successful, and in October 2009, the Council recommended Amendment 94 to the FMP for Groundfish of the BSAI, which requires vessels directed fishing for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. In 2010, NMFS published final regulations implementing BSAI Amendment 94 (75 FR 61642, October 6, 2010).

In February 2012, the Council reviewed an analysis of potential impacts of expanding the required use of modified nonpelagic trawl gear to vessels in the Central GOA flatfish fisheries. After additional review in April 2012, the Council recommended requiring that vessels directed fishing for flatfish in the Central GOA use modified nonpelagic trawl gear. GOA Amendment 89 incorporates both of the Council's recommendations, intended to be taken as a suite of protection measures for Tanner crab in the Central GOA.

The Council identified several reasons for protection measures for Tanner crab in the GOA groundfish fisheries:

- Tanner crab is identified in the FMP as a prohibited species that is

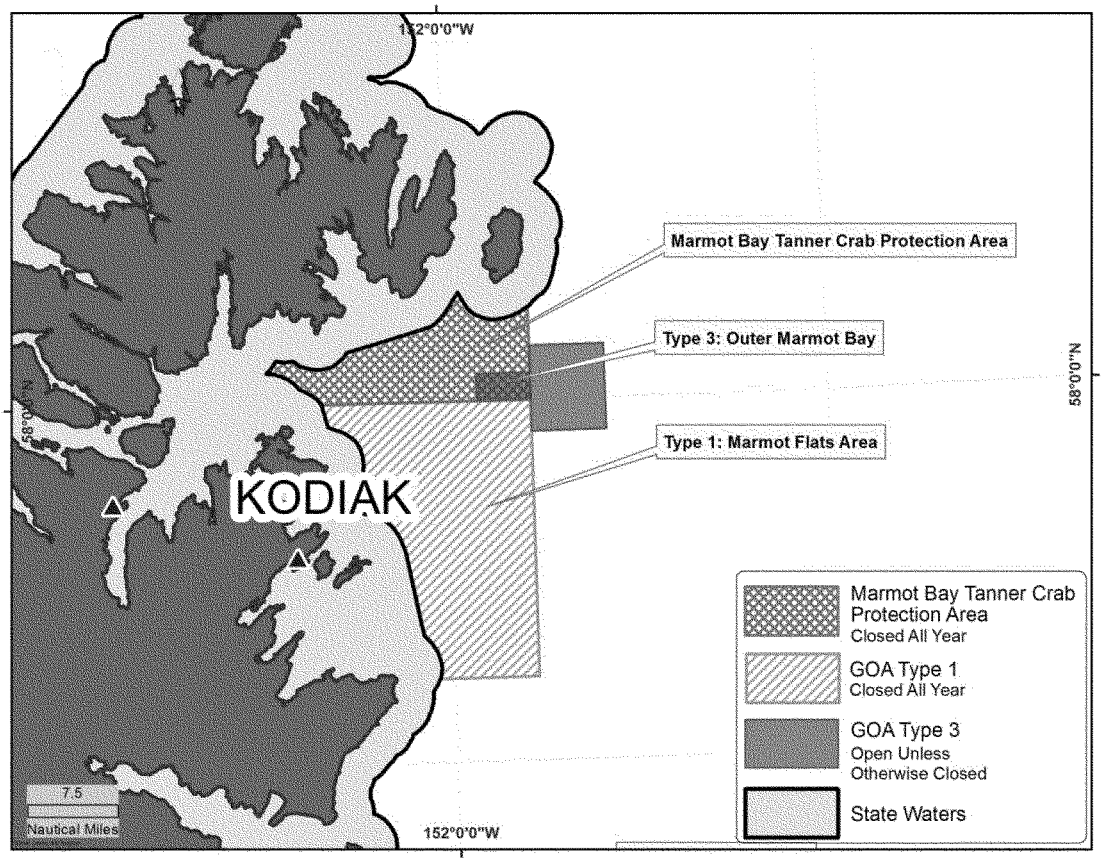
incidentally caught in the Central GOA groundfish trawl, pot, and longline fisheries. Tanner crab is incidentally caught in relatively high proportion by vessels using nonpelagic trawl gear in the Central GOA.

- Directed fisheries for Tanner crab in the Central GOA are fully allocated under the current limited entry system managed by the State of Alaska. Details of this crab fishery are described in Section 3.5 in the Area Closures EA/RIR/IRFA.
- No specific conservation measures exist in the Central GOA to address adverse interactions with Tanner crab by vessels using trawl gear to directed fish for groundfish.
- Tanner crab is a bottom-dwelling species, and limits on the use of nonpelagic trawl gear may reduce Tanner crab PSC and adverse effects on Tanner crab habitat.

Proposed Action 1: Marmot Bay Tanner Crab Protection Area

Amendment 89 to the GOA FMP would establish an area called the Marmot Bay Tanner Crab Protection Area (Marmot Bay Area). The proposed Marmot Bay Area is northeast of Kodiak Island and would extend westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees N latitude and 58 degrees 15 minutes N latitude. The proposed Marmot Bay Area would share borders with two existing areas, the Type 1 Marmot Flats Area and the Type 3 Outer Bay Area. The southern and eastern borders of the proposed Marmot Bay Area would be the same latitude and longitude as the northern and eastern borders, respectively, of the existing Marmot Flats Area. The Marmot Flats Area is closed to directed fishing with nonpelagic trawl gear (see § 679.22(b)(1)(i) and Figure 5 to part 679). Under current regulations, the Outer Marmot Bay Area is open to directed fishing with nonpelagic trawl gear unless otherwise closed. The proposed Marmot Bay Area and the existing Marmot Flats and Outer Marmot Bay Areas are shown in Figure 1. Where the proposed Marmot Bay Area overlaps the Type 3 Outer Marmot Bay Area, the more restrictive proposed regulation, the year round closure to the use of trawl gear (excepted as noted) in the Marmot Bay Area would apply. State of Alaska waters to the west of both the proposed Marmot Bay Area and the existing Marmot Flats Area are closed year-round to the use of nonpelagic trawl gear under existing state regulations (5 AAC 39.164).

Figure 1 Proposed Marmot Bay Tanner Crab Protection Area and Adjacent Type 1 and 3 GOA Crab Areas



With one exception, Amendment 89 would close the Marmot Bay Area year-round to directed fishing for groundfish by vessels using trawl gear. The term ''directed fishing'' is defined in regulation at § 679.2. Directed fishing for pollock by vessels using pelagic trawl gear would be exempt from this closure. Overall, the effect of the

proposed Marmot Bay Area closure would be to extend closures on the use of trawl gear to the north and east of State and Federal waters that are currently closed to nonpelagic trawl gear. The Marmot Bay Area closure also would prohibit the use of all trawl gear, other than pelagic trawl gear used in the directed fishery for pollock. The Council recommended this exemption due to the limited potential reductions of Tanner crab PSC that would occur if the pelagic trawl pollock fishery were subject to the closure. The use of pelagic trawl gear for species other than pollock was not identified in the Marmot Bay Area; therefore, no additional exemptions to the trawl closure were warranted. See Section 3.3.2 of the Area Closures EA/RIR/IRFA for additional detail.

The Council recommended the Marmot Bay Area trawl gear closure based primarily on the high observed rate of Tanner crab mortality by nonpelagic trawl gear in the Marmot Bay Area relative to other areas in the Central GOA. (See Section 3.3 of the Area Closures EA/RIR/IRFA for additional detail.) The areas with the greatest abundance of crab are the Marmot Bay Area, northeast of Kodiak Island; the Chiniak Gully east of Kodiak Island; and Alaska Department of Fish and Game (ADF&G) Statistical Areas 525702 and 525630, southeast of Kodiak Island. The Marmot Bay Area had the highest average mortality rate of crab per metric ton (mt) of groundfish catch by vessels using nonpelagic trawl gear in the Kodiak District between 2001 and 2009 (the most recent years of available data) at 7.68 crab/mt groundfish. (See Section 3.3 of the Area Closures EA/RIR/IRFA for additional detail.)

The Council considered a range of alternative closure areas to limit the use of nonpelagic trawl gear and pot gear in the Marmot Bay Area, ADF&G Statistical Areas 525702 and 525630, and the Chiniak Gully. Ultimately, the Council recommended limiting the closure to most trawl gear in the Marmot Bay Area based on: (1) The high rate of Tanner crab mortality in the Marmot Bay Area relative to other areas; (2) the observation of mature male and female Tanner crab populations within the Marmot Bay Area; (3) the occurrence of known Tanner crab habitat within the Marmot Bay Area; (4) the high rate of Tanner crab bycatch by vessels using trawl gear relative to pot gear; and (5) the limited impact that the Marmot Bay Area closure would likely have on existing nonpelagic trawl participants relative to closures in other areas. See Section 3.1 of the Area Closures EA/RIR/IRFA for additional detail of the alternatives considered. The Council considered but rejected closing areas to pot, longline, and pelagic trawl gear used in the directed pollock fishery given the relatively small amount of Tanner crab bycatch by these gear types relative to nonpelagic trawl gear. (See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail.)

The Marmot Bay Area closure would be consistent with past measures the Council has recommended, and NMFS has implemented, to limit impacts of nonpelagic trawl gear on crab populations, directly by limiting injury and mortality, and indirectly by reducing potential adverse habitat impacts. Overall, observed Tanner crab mortality in the Central GOA accounts for less than one fifth of one percent of the assessed crab population in the Central GOA. See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail. Because overall crab bycatch in the GOA groundfish fisheries can be small in relation to crab population, but potentially concentrated in certain areas or at certain times, time and area closures are more effective than Tanner crab PSC limits in reducing the potential impacts of nonpelagic trawl gear on crab stocks. The proposed closure for the Marmot Bay Area may assist in the conservation of the Tanner crab stock by reducing injury and mortality and potential adverse effects of nonpelagic trawl gear on bottom habitat used by Tanner crab.

In October 2010, the Council also recommended that NMFS incorporate statistically robust observer information from certain vessels using pot gear in the Marmot Bay Area and certain vessels using nonpelagic trawl or pot gear in two other specific areas near Kodiak, AK (ADF&G Statistical Area 525702 and Chiniak Gully). Overall, the intent of the Council's recommendation was to improve estimates of Tanner crab bycatch data in the GOA groundfish fisheries that occur within these areas. At the same meeting that the Council recommended enhanced observer coverage for these three areas, the Council also recommended Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP which comprehensively restructured the funding and deployment of onboard observers under the North Pacific Groundfish Observer Program (Observer Program). The Council included as part of its recommendation for improved estimates of Tanner crab bycatch that NMFS ''incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations'' in the three specific areas near Kodiak, AK.

NMFS published a notice of availability for Amendments 86 and 76 to the FMPs on March 14, 2012 (77 FR 15019), and a proposed rule for the restructured Observer Program on April 18, 2012 (77 FR 23326). On June 7, 2012, the Secretary of Commerce approved Amendments 86 and 76 to the FMPs for the restructured Observer Program in the Alaska groundfish fisheries, and the final rule to implement the amendments, effective January 1, 2013, was published on November 21, 2012 (77 FR 70062). Details of the restructured Observer Program are available in the proposed and final rules for that action.

The restructured Observer Program improves the quality of fisheries data, including Tanner crab bycatch information in the GOA groundfish fisheries. Vessels under the restructured Observer Program are either fully or partially observed. A detailed list of vessels in the full and partial observer coverage categories is provided in the restructured Observer Program proposed rule (77 FR 23326, April 18, 2012). A randomized system for the assignment of observer coverage throughout the GOA for partially observed vessels is used to reduce potential bias in the observer data. Selecting specific locations in the Central GOA for increased observer coverage would reduce the ability to randomize observer assignments and therefore potentially bias observer data. Because the restructured Observer Program incorporates an observer deployment strategy that ensures adequate coverage to establish statistically robust observations for the GOA, NMFS has determined that the Council's recommendation has been implemented by Amendments 86 and 76 and no additional measures are needed with Amendment 89. NMFS intends to use the regulations and deployment process established under the restructured Observer Program to obtain fishery catch and bycatch data without specific observer coverage requirements in specific areas in the GOA. In order to ensure that the Council's desire to obtain better observer data is being met, NMFS will present a deployment plan for observers annually for the Council's review.

Proposed Action 2: Modification of Nonpelagic Trawl Gear Used in the Central GOA Directed Flatfish Fisheries

Amendment 89 would amend the FMP to require the use of modified nonpelagic trawl gear when directed fishing for flatfish in the Central GOA

and would provide authority in the FMP to specify in regulation the modifications that are required to raise portions of the gear off the sea floor. In the GOA, the flatfish fisheries include the directed fisheries for shallow-water flatfish, deep-water flatfish, arrowtooth flounder, rex sole, and flathead sole, as defined in Table 10 to 50 CFR part 679.

While the proposed amendments to the FMP under Amendment 89 are general, the Council provided detailed recommendations on the specific modifications that would be required to nonpelagic trawl gear through regulation. The primary effect of the proposed rule to implement this aspect of Amendment 89 would be to require modifications to a specific component of the gear. Nonpelagic trawl gear uses a pair of long lines called ''sweeps'' to herd fish into the net. The sweeps drag across the bottom and may adversely impact benthic organisms (e.g., crab species, sea whips, sponges, and basket stars). Approximately 90 percent of the bottom contact of nonpelagic trawl gear used in directed fishing for flatfish is from the sweeps, which can be more than 1,000 feet (304.8 m) in length.

NMFS studies in the Bering Sea have shown that elevating the trawl sweeps can reduce the adverse effects of nonpelagic trawl gear on Tanner, snow, and red king crab by reducing the unobserved mortality and injury of these species. In addition, elevating the trawl sweeps can reduce impacts on benthic organisms, such as basketstars and sea whips. Further research was conducted in 2011 in the GOA to identify the appropriate construction of modified nonpelagic trawl gear, and to identify and resolve any implementation issues specific to the GOA. Field testing in the GOA of the modified nonpelagic trawl gear demonstrated that the participants in the GOA flatfish fishery can meet the same performance standard and construction requirements that apply to the Bering Sea flatfish fishery under regulations at § 679.24(f). Additional information on these studies and tests is provided in Section 1.5.5 of the Trawl Sweep EA/RIR/IRFA.

Proposed regulations implementing Amendment 89 would require that vessels using nonpelagic trawl gear to directed fish for flatfish in the Central GOA meet the performance standard and construction requirements set forth in § 679.24(f), which require the use of elevating devices to raise the elevated section of the sweeps at least 2.5 inches. Elevating devices would be placed on the sweeps to meet this performance standard. Details of the performance standard and construction requirements are at § 679.24(f).

As noted in Section 1.8 of the Trawl Sweep EA/RIR/IRFA, it is not possible to quantify a benefit to crab stocks in the Central GOA from modified nonpelagic trawl gear without further testing to understand how sediment conditions in the Central GOA flatfish fishery compare to the areas in which the Bering Sea experiments occurred. However, the general similarity of GOA trawl gear to that used in the Bering Sea indicates that while the benefits may be smaller due to different sediment conditions in the GOA, they would still be substantial. While requiring this gear modification for vessels fishing in the Central GOA flatfish fishery could provide benefits to crab stocks by reducing unobserved injury and mortality, it would not be likely to change reported crab PSC totals from nonpelagic trawl fishing, which account only for crabs that come up in the trawl net. As noted in Section 2.9 of the Trawl Sweep EA/RIR/IRFA, the proposed action is not expected to result in a net decrease in the target catch rates in the Central GOA flatfish fishery.

The Council considered but rejected alternatives that would have required the use of modified nonpelagic trawl gear in other nonpelagic trawl fisheries (e.g., Pacific cod), and the use of nonpelagic trawl gear in the Eastern and Western GOA flatfish fisheries. Flatfish fisheries in the Central GOA contribute the greatest proportion of Tanner crab PSC, while other nonpelagic trawl gear fisheries in the GOA account for only a modest proportion of Tanner crab PSC. See Sections 1.1 and 1.5 of the Trawl Sweep EA/RIR/IRFA for additional detail (see **ADDRESSES**). The Council's recommendation targets the specific fisheries that consistently have the highest bycatch of Tanner crab in the GOA.

Public Comments

NMFS is soliciting public comments on the proposed FMP amendment through August 2, 2013. A proposed rule that would implement Amendment 89 will be published in the **Federal Register** for public comment at a later date, following NMFS' evaluation pursuant to the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 89 in order to be considered in the approval/disapproval decision on the amendment. All comments received on the amendment by the end of the comment period, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by 1700 hours, A.D.T., on the last day of the comment period (See **DATES** and **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–13050 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 106
Monday, June 3, 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

Office of the Secretary

[0503–AA51]

Revocation of Statement of Policy on Public Participation in Rule Making

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed revocation of Statement of Policy; request for comments.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to rescind the Statement of Policy titled ''Public Participation in Rule Making,'' published in the **Federal Register** on July 24, 1971 (36 FR 13804) that requires agencies in USDA to follow the Administrative Procedure Act's (APA) notice-and-comment rulemaking procedures even in situations where the APA does not require it. The Statement of Policy implemented a 1969 recommendation by the Administrative Conference of the United States (ACUS), which urged Congress to amend the APA to remove the exemption from the notice-and-comment requirement for rulemakings relating to ''public property, loans, grants, benefits, or contracts,'' adding that agencies should follow the notice-and-comment procedures pending amendment of the APA.

In proposing to rescind the Statement of Policy, USDA notes that in the more than 40 years since ACUS made its recommendation, Congress has not amended the APA to implement it. Moreover, USDA has determined in this time that the advantages of implementing the ACUS recommendation do not outweigh the disadvantages, such as increased costs and delayed implementation imposed on USDA programs. The proposed change would not result in USDA forgoing notice-and-comment rulemaking for all regulatory actions relating to public property, loans, grants, benefits, or contracts, rather the proposed change would grant USDA agencies the discretion to determine the appropriateness of notice-and-comment rulemaking for this class of rulemakings.

DATES: Comments must be received no later than July 3, 2013.

ADDRESSES: You may submit comments, identified by the RIN, by any of the following methods:

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

Email: RIN0503AA51@obpa.usda.gov. Include the RIN in the subject line of the message.

Fax: 202–720–5837.

Mail: Paper, disk or CD–ROM submissions should be submitted to Adam J. Hermann, Esq., General Law and Research Division, Office of the General Counsel, USDA, STOP 1415, 1400 Independence Avenue SW., Washington, DC 20250.

Hand Delivery/Courier: Adam J. Hermann, Esq., General Law and Research Division, Office of the General Counsel, USDA, South Building Room 3311, 1400 Independence Ave. SW., Washington, DC 20250.

Instructions: All submissions received must include the agency name and the RIN. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, General Law and Research Division, Office of the General Counsel, 3311–S, USDA, 1400 Independence Ave. SW., Washington, DC 20250; Voice: (202) 720–9425; Email: *RIN0503AA51@obpa.usda.gov.*

SUPPLEMENTARY INFORMATION:

1. The APA provides generally that, before a rule may be promulgated by a Federal agency, notice of proposed rulemaking must be published in the **Federal Register,** and interested persons must be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments. *See* 5 U.S.C. 553(b), (c). However, the APA specifically exempts from these public participation requirements ''a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2).

In 1969, ACUS adopted Recommendation No. 69–8, which recommended that Congress amend the APA to remove the exemption for rulemakings relating to ''public property, loans, grants, benefits, or contracts,'' and that agencies follow the APA's notice-and-comment procedures for such rulemakings pending amendment of the APA.

On July 24, 1971, Secretary of Agriculture Clifford M. Hardin published in the **Federal Register** a Statement of Policy (''Public Participation in Rule Making'') implementing the ACUS recommendation. The document outlined the policy of USDA ''to give notice of proposed rule making and to invite the public to participate in rule making where not required by law.'' Specifically, the Statement of Policy required that all agencies of USDA follow the public participation requirements of 5 U.S.C. 553(b) and (c) in rulemaking relating to public property, loans, grants, benefits, or contracts, and it further provided that any ''good cause'' finding under 5 U.S.C. 553(b)(B) will be used ''sparingly'' and ''only where there is a substantial basis therefor.'' *See* 36 FR 13804.

The 1971 Statement of Policy was issued in anticipation of legislative action that would have amended the APA to remove the exemption for such matters, but in the more than 40 years that have passed since the ACUS recommendation was adopted, Congress has not acted to implement the recommendation. USDA ascribes significant weight to this fact.

2. When USDA issued the Statement of Policy implementing the 1969 ACUS recommendation, USDA anticipated that ''[t]he advantages of implementing the [ACUS] recommendation . . . will outweigh any disadvantages such as increased costs or delays.'' USDA has since determined that this is not the case, finding that, in many cases, using the APA's notice-and-comment procedures necessarily delays the implementation of a program without providing a corresponding benefit. For example, Executive Order 12866, section 6(a), generally requires that agencies use a comment period ''of not less than 60 days.'' When this two-month period is added to the amount of agency staff time needed to prepare a notice of proposed rulemaking and obtain the necessary Office of Management and Budget reviews and

clearances pursuant to Executive Order 12866, plus the additional time it takes the agency to review and respond to any comments received, much time has been spent making a proposal to implement a program, rather than implementing it.

Without the 1971 Statement of Policy, an agency may choose to solicit public comment on a proposed rule even where not required to do so by the APA in order to give the public an opportunity to weigh in on matters of great public interest, such as, for example, establishing eligibility requirements for a particular loan program. In this situation, USDA would continue to use notice-and-comment rulemaking to promulgate regulations implementing the program, notwithstanding the APA exemption.

In other cases, an agency may conclude that the public benefit of issuing awards as soon as practicable outweighs any advantage of affording the public a pre-implementation opportunity to comment on program rules. For example, the nature of the program itself, such as certain USDA loan mechanics, may undercut the need for proposed rulemaking because the general terms of most Federal loan programs are already established through government-wide issuances such as Office of Management and Budget (OMB) Circular No. A–129, Policies for Federal Credit Programs and Non-Tax Receivables. In such cases, the public should not be deprived of timely Federal assistance due to an administratively-imposed regulatory procedure that the APA itself does not require.

Indeed, USDA has found that in many situations, the issuance of proposed rules (or interim rules with requests for public comment) has generated little public interest in the way of formal comments, thus prolonging program implementation without a corresponding benefit. For example:

(a) The Voluntary Public Access and Habitat Incentive Program, as added by section 2606 of the Food, Conservation, and Energy Act of 2008 (''2008 Farm Bill''), provides grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land. USDA received 14 comments on the interim final rule, published July 8, 2010 (75 FR 39135). The majority of public comments supported the program, and while the public welcomed the opportunity to comment, they specifically mentioned that they did not want the rulemaking process to delay making the grants. While a small number of public comments opposed the use of Federal funds for this purpose, or otherwise opposed the scope of the program as specified in the 2008 Farm Bill, they did not provide constructive alternatives to the implementation of the program outlined in the rule. Moreover, the supportive comments that requested clarification on particular terms could have been addressed as part of the Request for Proposals (RFP) process, rather than through the notice-and-comment rulemaking process.

(b) On January 22, 2010, RUS published a proposed rule in the **Federal Register** (75 FR 3642) to establish the Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program, as added by section 6002 of the 2008 Farm Bill. The SEARCH grant program authorizes the Secretary to make predevelopment planning grants for feasibility studies, design assistance, and technical assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects. No comments were received on the regulation text; however, one public comment was received with regard to the information collection and recordkeeping requirements contained in the rule. This comment, which did not result in changes to program, would have been addressed as part of the Paperwork Reduction Act process, rather than through the notice-and-comment rulemaking process.

(c) The Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), published an interim final rule with request for comment on November 20, 2008 (73 FR 70245) that set forth the policies and procedures implementing the Agricultural Management Assistance Program (AMA). Through AMA, NRCS provides technical and financial assistance to participants in eligible States to address issues such as water management, water quality, and erosion control by incorporating conservation practices into their agricultural operations. NRCS received four letters containing approximately one dozen comments, which the agency addressed in a final rule published December 8, 2009. The majority of the changes in the final rule were administrative, technical, or corrections to the interim rule, rather than substantive changes made in response to public input.

Except where otherwise required by law,[1] USDA agencies should have the discretion to determine the appropriateness of affording the public an opportunity for notice and comment when promulgating regulations relating to public property, loans, grants, benefits, or contracts involving their programs. The Department's proposal to rescind the 1971 Statement of Policy will not impact what constitutes a ''rule'' under the APA (*see* 5 U.S.C. 551(4)), nor will it affect the types of information that are required to be published in the **Federal Register** (*see* 5 U.S.C. 552(a)(1)). USDA remains committed to involving the public in the rulemaking process through the issuance of proposed rules where necessary or appropriate.

3. The Department's proposal to rescind the 1971 Statement of Policy acknowledges the reality that the public participates in much of the formulation of agency policies on financial and transactional programs through means other than by following the daily publication of the **Federal Register.** The 1969 ACUS recommendation on which the 1971 Statement of Policy was based was adopted at a time when information published in the **Federal Register** was not widely available elsewhere. Today, information on the implementation of agency programs is widely distributed in a number of ways, including via agency Web sites and specialized Web sites such as Grants.gov (*http://www.grants.gov*) and Benefits.gov (*http://www.benefits.gov*), and the public routinely engages the agencies through multiple online channels, including the Open Government Initiative.

USDA remains committed to transparency and to providing timely information to the public. For example, with respect to discretionary awards of Federal assistance, USDA will continue to follow the Office of Federal Financial Management (OFFM) Policy Directive on Financial Assistance Program

[1] Revocation of the Statement of Policy will not affect other statutory public participation requirements. For example, section 4(c) of the Food and Nutrition Act of 2008 requires notice-and-comment rulemaking in accordance with the APA for the Supplemental Nutrition Assistance Program. *See* 7 U.S.C. 2013(c). Additionally, section 22 of the Office of Federal Procurement Policy Act, Public Law 93–400, has specific notice-and-comment procedures for the issuance of agency procurement policies, regulations, procedures, and forms. *See* 41 U.S.C. 1707. Also, section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, Public Law 105–185, requires the Secretary, when formulating a request for proposals for competitively-awarded agricultural research, extension, or education activity funding, to consider input solicited from stakeholders regarding the prior year's request for proposals. *See* 7 U.S.C. 7612(c)(2).

Announcements (68 FR 37370), which requires Federal agencies to post on the internet, in a standard format, all announcements of funding opportunities under which domestic entities are eligible recipients, as well as the OFFM Policy Directive on use of Grants.gov FIND (68 FR 58146), which requires Federal agencies to electronically post synopses of announcements of funding opportunities under financial assistance programs that award discretionary grants and cooperative agreements, using a standard set of data elements. As discussed above, the Office of Federal Procurement Policy Act separately provides notice-and-comment procedures for agency issuances of procurement policies, regulations, procedures, and forms. General public property regulations are found in the Federal Management Regulation, 41 CFR part 102, and USDA will continue to publish on its Web site the supplemental Agriculture Property Management Regulations (AGPMR) and Departmental directives on property management.

USDA's commitment to transparency and open government is an important part of the Obama Administration's Open Government Initiative, as reflected in the Presidential Memorandum on ''Transparency and Open Government'' (Jan. 21, 2009) and OMB Memorandum M–10–06, ''Open Government Directive'' (Dec. 8, 2009). For more information on USDA's efforts as part of the Open Government Initiative, please visit *http://www.usda.gov/open.*

This proposed action has been reviewed under Executive Order No. 12866 and has been determined not to be a ''significant regulatory action.'' This action will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, 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. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

USDA certifies that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 et seq.).

This proposed action contains no information collections or recordkeeping requirements under the Paperwork Reduction Act, as amended, (44 U.S.C. 3501 et seq.).

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2013–13068 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forest, Carson Ranger District Mt. Rose Ski Tahoe—Atoma Area Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Humboldt-Toiyabe National Forest (HTNF), Carson Ranger District, will prepare an environmental impact statement to analyze the effects of a proposal from Mt. Rose Ski Tahoe (Mt. Rose) to expand its lift and terrain network. The project is located approximately 12 miles west of the intersection of Mt. Rose Highway (Nevada State Route 431) and U.S. 395, immediately north of the Mt. Rose base lodge and parking area. The project is located on both private and National Forest System (NFS) land within Washoe County, Nevada.

DATES: Comments concerning the scope of the analysis would be most helpful if received within 30 days of the publication of this notice in the **Federal Register**. At this time, the draft EIS is expected to be available for public review in fall/winter 2013, with a final EIS available in spring/summer 2014.

ADDRESSES: Written comments can be submitted by any of the following methods:

- *Electronic comments:* Select the ''Comment on this Project'' link on the HTNF Web site at *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=41487.*
- *U.S. Mail:* Mail to Linda Crawley, Team Leader, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.
- Fax to 775–355–5399. Please use a fax cover sheet and include ''Mt. Rose Ski Tahoe—Atoma Area EIS'' in the subject line.
- *Hand Delivered:* 1200 Franklin Way, Sparks, Nevada 89431, 8:00 a.m.–4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, please contact Linda Crawley, Humboldt-Toiyabe National Forest, 775–355–5377, *lcrawley@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the proposed project is to enhance the skiing experience at Mt. Rose and meet the ever-changing expectations of the recreating public. Two primary needs have been identified: (1) Provide additional terrain at Mt. Rose that is comfortable and appropriate for low-level skiers and riders. (2) Enhance Mt. Rose's ability to provide a consistent and quality snow surface on key ski terrain throughout the season.

Although Mt. Rose is well known for its abundance of expert terrain, due to the topography of public and private lands that compose the existing ski area, it suffers from a lack of terrain suitable for low-level skiers and riders. As a result, Mt. Rose struggles to provide a full range of beginner, novice, and intermediate terrain that is necessary for a logical ''learning progression,'' which is critical for skiers and riders as they gain skills and confidence. Also, it is common for advanced intermediate and expert skiers/riders to descend through lower-level terrain on their way to the base area. This mixing of ability levels is intimidating for lower levels skiers and riders, and is inconsistent with the type of recreational offering that Mt. Rose strives to provide.

In addition, inefficiencies in Mt. Rose's snowmaking system prevent the resort from capitalizing on intermittent periods of cold temperatures within which snow can be most efficiently produced.

Proposed Action: The HTNF proposes to authorize a special use permit (SUP) boundary adjustment on NFS land to create the Atoma lift and trail ''Pod'' to the north of the Mt. Rose Highway. The proposed Atoma trail plan includes 11 defined trails, and takes advantage of both the location and topography of the area while strategically preserving large tree islands that would be appropriate for lower-level skiers and riders to navigate. No new roads are proposed; the design makes use of the existing road network (including the Old Mt. Rose Highway) by incorporating it into the trail plan. These existing roads will also facilitate construction and

maintenance of the proposed lift and trail network. All proposed trails will be groomed on a rotating basis, as needed, to maintain a consistent snow surface. Glades (tree stands that have been strategically thinned, thereby increasing the spacing between individual trees, to accommodate skiing and riding) between formal trails will not be groomed.

The trail plan for the Atoma Pod includes approximately 23 acres of new trails. Approximately 49 acres of glades will be available between the defined trails. Specific portions of proposed trails have been identified for grading in order to improve the surface or gradients (totaling approximately 6.0 acres).

The existing Atoma building and associated parking lot, will be removed and the area re-contoured to natural grades. In conjunction with the proposed Atoma Pod a raised, vegetated buffer between the Mt. Rose Highway and new skiing terrain will be created. Terrain in the Atoma Pod is proposed to be served by a new fixed-grip quad chairlift with a capacity of between 1,800 and 2,200 people-per-hour. The 3,500-foot long lift will span the Mt. Rose Highway, with the bottom terminal located in a flat, open area at an elevation of approximately 7,970 feet on NFS land. The top terminal will be located on private land owned by Mt. Rose at an elevation of 8,395 feet. Adequate road access to the top and bottom terminal sites currently exists.

In order to connect the existing terrain network at Mt. Rose (private land) to the proposed Atoma Pod (NFS land), a skiway will be constructed. The skiway will begin at the top terminal of the Atoma chairlift and cross a proposed skier bridge over the Mt. Rose Highway, connecting to NFS land in the Atoma Pod. The skiway will be located on private land, and grading will be necessary to achieve/maintain appropriate grades for descending skiers and riders. The bridge will be constructed within the Nevada Department of Transportation highway right-of-way. This roughly 130-foot long skier bridge will provide access for skiers to enter the Atoma Pod and will be constructed to minimum of 25 feet wide to accommodate grooming.

Proposed ski trails in the Atoma Pod have been planned around the natural topography preserving/avoiding known resources of importance (e.g., wetlands, cultural resources, and healthy, large and/or important trees) to the extent possible. Trails will be constructed to variable widths—ranging from 40 to 70 feet. Site-specific prescriptions for the construction of each proposed trail in the Atoma Pod will be analyzed in detail in the draft EIS. For safety and operational reasons, standing dead/diseased timber will be removed throughout the Atoma area.

A new water impoundment is proposed adjacent to the skier's left edge of the upper Galena trail (near an existing potable water storage tank) at Mt. Rose. The site has relatively flat topography and is in close proximity to Mt. Rose's existing road network, snowmaking control building, and associated existing buried water lines. The impoundment will be located entirely on NFS land, as no comparably suitable location is available on private lands. The proposed water impoundment will store between 13 and 15 acre feet of water (approximately 4.2 and 4.9 million gallons), with a surface area of approximately 1.6 acres and a disturbance area of roughly 3.5 acres. Because of the porosity of soils present at Mt. Rose, the impoundment will be fitted with a geosynthetic liner to prevent seepage. Approximately 50,000 cubic yards of material will be excavated from construction of the impoundment.

New snowmaking coverage is proposed on five trails in the Atoma Pod. Water—originating from Mt. Rose's well on private land—will ultimately be stored in the proposed on-mountain impoundment. A water transmission line will be installed, across the Atoma skier bridge, and into the Atoma Pod. Except where wetlands have been identified, all snowmaking lines will be buried below the frost line, and related ground disturbance will be analyzed in the EIS.

Under the proposed action, dispersed (''backcountry'') recreational access to NFS land within and adjacent to the Atoma Pod will continue to be allowed throughout the winter and summer. The EIS will consider and analyze how to accommodate dispersed recreational access to NFS land, with consideration given to operational and public safety needs within a developed ski area.

The proposed action includes a non-significant Forest Plan amendment to prohibit future commercial development on lands acquired as a result of the 1994 Galena Resort Land Exchange. The non-significant Forest Plan amendment is proposed to clarify management direction in the Carson Front Management Area #2, Mount Rose Unit. The Atoma area (approximately 112 acres), as well as the 168 acres already included in the Mt. Rose Ski Tahoe SUP and designated as ''The Chutes'', would be excluded from the Forest Plan amendment.

Lead and Cooperating Agencies: The Forest Service is the lead federal agency for the NEPA analysis process and preparation of the EIS. The Nevada Department of Transportation has been identified as a cooperating agency for this project.

Responsible Official: William A. Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made: Based on the analysis that will be documented in the forthcoming EIS, the responsible official will decide whether to amend the current special use permit to implement, in whole or in part, the proposed action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process: This notice of intent initiates the scoping process, which guides the development of the EIS. The Forest Service is soliciting comments from federal, state and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed project.

It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Additional information on the proposed action will be available at two public open houses which will be held from 4:00 to 6:00 p.m. on (1) June 18, 2013, at the Winters Creek Lodge, 21333 State Route 878, Reno, NV 89511 and (2) June 19, 2013, at the Humboldt-Toiyabe National Forest Supervisors Office, 1200 Franklin Way, Sparks, NV 89431.

Dated: May 28, 2013.

William A. Dunkelberger,

Forest Supervisor.

[FR Doc. 2013–13010 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Baker-Snoqualmie National Forest; Snohomish County, WA; Green Mountain Lookout Removal

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public scoping comment period.

DATES: Comments must be received no later than July 8, 2013.

SUMMARY: The Mt. Baker-Snoqualmie National Forest hereby gives notice that it is extending the public scoping comment period for the Green Mountain Lookout Removal Project. A notice was originally published in the **Federal Register** on May 2, 2013 (Volume 78, No. 85), beginning a 30 day comment period. Please see the Notice of Intent (FR Doc. 2013–10322) for more information related to the project. In response to requests for additional time, the Forest Service will extend the comment period from June 3, 2013, to July 8, 2013.

ADDRESSES: Send written comments to Todd Griffin, Project Leader, Mt. Baker-Snoqualmie National Forest, 2930 Wetmore Avenue, Suite 3A, Everett, Washington 98201. Comments may also be sent via email to *toddgriffin@fs.fed.us,* or via facsimile to (425) 783–0141.

FOR FURTHER INFORMATION CONTACT: Todd Griffin, Project Leader, at the address listed above or by telephone (360) 677–2258.

Dated: May 28, 2013.

Steve Kuennen,

Acting Forest Supervisor.

[FR Doc. 2013–13008 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise the GIPSA Administrator on the programs and services that GIPSA delivers under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: June 18, 2013, 8:00 a.m. to 4:30 p.m.; and June 19, 2010, 8:00 a.m. to Noon.

ADDRESSES: The Advisory Committee meeting will take place at GIPSA's National Grain Center, 10383 N. Ambassador Drive, Kansas City, Missouri 64153.

Requests to orally address the Advisory Committee during the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 690–2173.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry by phone at (202) 205–8281 or by email at *Terri.L.Henry@usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the GIPSA Administrator with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the GIPSA Web site at *http://www.gipsa.usda.gov/fgis/adcommit.html*.

The agenda will include an overview of Federal Grain Inspection Service operations-market overview, international programs, moisture meter implementation, update on biotech proficiency program, Field Management Division updates and initiatives, and an overview of the quality pilot in New Orleans and results to date.

For a copy of the agenda please contact Terri L. Henry by phone at (202) 205–8281 or by email at *Terri.L.Henry@usda.gov*.

Public participation will be limited to written statements unless permission is received from the Committee Chairperson to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri L. Henry at the telephone number listed above.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–13063 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Intent to Prepare an Environmental Impact Statement for the Green River/Tusher Diversion Dam Rehabilitation Project, Emery/Grand County, UT

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent (NOI) to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4370d, as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500–1508) and Natural Resources Conservation Service (NRCS) regulations that implement NEPA at 7 CFR part 650, the NRCS Utah State Office announces its intent to prepare an Environmental Impact Statement (EIS) for the Green River/Tusher Diversion Dam Rehabilitation project.

The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed action and possible alternatives, and to invite public participation in the EIS process (including providing comments on the scope of the draft EIS, to announce that a public scoping meeting will be conducted, and to identify cooperating agency contacts). The EIS process will evaluate alternatives recommended for detailed study as a result of previous planning-level studies completed by NRCS and any additional (new) alternatives identified during scoping.

DATES: Written comments on the scope of the draft EIS, including the project's purpose and need, the alternatives to be considered, types of issues that should be addressed, associated research that should be considered, and the methodologies to be used in impact evaluations should be sent to NRCS starting on May 29, 2013 and ending on or before June 28, 2013 (5:00 p.m. MDT), to the address listed in the **ADDRESSES** section below. Comments submitted after June 28, 2013 will be considered to the extent practicable by the project team.

Two scoping meetings to present the project and develop the scope of the EIS will be held on Wednesday, June 12, 2013, via Tele-briefings. Participants should call (800) 346–7359 (entry code 840561) at least fifteen minutes prior to the meeting and an operator will connect you to the Tele-briefing. The first Tele-briefing will start at 2:00 p.m. (MDT) with a formal presentation and

last until 2:45 p.m. An informal question and answer period will be held from 2:45 p.m. to 4:00 p.m. The second Tele-briefing will start at 6:00 p.m. (MDT) with a formal presentation and last until 6:45 p.m. An informal question and answer period will be held from 6:45 p.m. to 8:00 p.m. Presentation materials will be available on the project Web site (*http://www.ut.nrcs.usda.gov/programs/EWP/index.html*) for participants to download prior to the meeting.

Any individual who requires special assistance to participate in a scoping meeting, such as hard copy documentation of the meeting or other assistance, should contact Mr. Greg Allington, McMillen, LLC, (208) 342–4214 or *greenriver@mcmillen-llc.com* by Friday, May 24, 2013 to allow sufficient time for documents to be mailed or special arrangements to be made.

Scoping meeting presentation materials will be available on the NRCS Utah Emergency Watershed Protection Web site (*http://www.ut.nrcs.usda.gov/programs/EWP/index.html*) prior to the meeting. Electronic copies of the scoping materials may also be obtained from Mr. Greg Allington, McMillen, LLC, (208) 342–4214 or *greenriver@mcmillen-llc.com*. Representatives of Native American tribal governments and of federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be cooperating agencies, as appropriate.

ADDRESSES: Formal scoping comments may be submitted via mail, email, fax, or oral telephone comment to:

- Contact: Mr. Greg Allington, McMillen, LLC,
- Mail: 1401 Shoreline Dr., Boise, Idaho 83702
- Email: *greenriver@mcmillen-llc.com*
- Fax: (208) 342–4216
- Telephone: (208) 342–4214.

Details of the public scoping meeting are given above under DATES. Comments should be submitted by close-of-business (5:00 p.m. MDT) June 28, 2013. Respondents should provide contact information if you wish to be included on the EIS mailing list. Please note that any respondent's entire scoping comment, including their personal contact information, may be made publicly available at any time during the EIS process.

FOR FURTHER INFORMATION CONTACT: Mr. Bronson Smart, State Conservation Engineer, Wallace F. Bennett Federal Building, 125 South State Street, Room 4010, Salt Lake City, Utah 84138–1100, or via email at *bronson.smart@ut.usda.gov*. Information may also be obtained from Mr. Greg Allington, McMillen, LLC, 1401 Shoreline Dr., Boise, Idaho 83702, or via email at *greenriver@mcmillen-llc.com*.

SUPPLEMENTARY INFORMATION:

Background—The NRCS and Utah Department of Agriculture and Food (UDAF) are analyzing alternatives to rehabilitate the Green River/Tusher Diversion Dam due to damage from the late 2010 and early 2011 flood events. The dam was constructed in the early 1900's and has been modified over the years to maintain the structure. During the 2010/2011 flood events, flows in the Green River caused severe damage to the diversion structure compromising its structural integrity. If the dam fails, water delivery to two irrigation canals, a historic irrigation water wheel delivery system, and one hydropower plant would be eliminated.

The rehabilitation of the diversion dam would be funded through the NRCS Emergency Watershed Protection (EWP) program (CFR, Title 7: Agriculture, Part 624—Emergency Watershed Protection) via technical assistance and partial construction funding. A National Environmental Policy Act (NEPA) Programmatic EIS was prepared by NRCS for the overall EWP program in 2004; however, the rehabilitation of this diversion dam does not fit within the analysis parameters of the Programmatic EIS. Therefore, additional NEPA analysis is required for this project.

The project started out under the analysis of an Environmental Assessment (EA) during the first scoping period that was opened from October 30, 2012 to November 30, 2012. A public scoping meeting was held on November 15, 2012 at Green River City Hall in Green River, Utah. Through additional consultation with the Utah State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act, it was determined that the diversion dam may be eligible for listing on the National Register of Historic Places. Any modifications to the dam may be considered an ''adverse effect'' which may make it ineligible for listing after rehabilitation. A wide range of alternatives is being considered for the project as listed in the Alternatives section below. Some of the impacts to the diversion dam from these alternatives may be considered ''significant'' to cultural resources and as a result, NRCS has decided to prepare an EIS for the project. The EIS will be prepared consistent with Title 390, The National Emergency Watershed Protection Program Manual.

The Upper Colorado Endangered Fish Recovery Program (Recovery Program) is proposing to fund and install a fish barrier in the west irrigation and hydropower plant canal to prevent Endangered Species Act (ESA) listed fish species from entering the canal and/or hydropower plant. As part of the dam repair, upstream and downstream fish passage may also be incorporated into the design. These fish protection and passage components are proposed for inclusion in the Green River diversion rehabilitation project to help reduce mortality of ESA listed fish species populations in the Green River.

Scoping Process—NRCS invites all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, alternatives proposed to date, new alternatives that should be considered, specific areas of study that might be needed, and evaluation methods to be used.

Background information including the project purpose and need and alternatives developed to date will be available prior to the scoping meeting on the NRCS Utah EWP Web site (*http://www.ut.nrcs.usda.gov/programs/EWP/index.html*). Electronic and hard copies of supporting documentation are also available from Mr. Greg Allington, McMillen, LLC, (208) 342–4214 or *greg.allington@mcmillen-llc.com*.

Once the scope of the EIS is confirmed upon the close of scoping, NRCS will begin preparation of the draft EIS. A summary of comments received during the scoping period will be compiled in a scoping report which will be available on the NRCS Utah EWP Web site.

Project Study Area and Environmental Setting—The proposed project is located approximately 6.6 miles north of the city of Green River in Emery/Grand Counties, Utah. The project study area includes land that is unincorporated on both sides of the Green River. The primary study area includes the diversion dam where rehabilitation activities would occur. Secondary study areas include areas required for alternatives of the project as described in the Alternatives section below such as the powerhouse raceway, irrigation canal on the east side of the diversion dam, construction staging areas on both sides of the river, and potential impacts to the river and riparian area upstream of the diversion dam.

The environmental setting for the project area is primarily located in a riverine environment surrounded by a relatively narrow riparian plant

community adjacent to the river. Beyond the riparian community are agricultural fields on the east side of the diversion dam and BLM land on the west side of the diversion dam that is primarily comprised of desert shrubs and grasses.

Environmental resources consist of the natural and man-made environment. Preliminary resource concerns associated with the rehabilitation of the diversion dam may include both beneficial and negative impacts to water quality and supply, fish, threatened and endangered species, cultural, recreation, aesthetics, and public health and safety.

Alternatives—NRCS is analyzing the following conceptual alternatives to rehabilitate the diversion dam:

- Repair Existing Diversion Dam: Repair the existing diversion to safely pass flood events.
- Replace Existing Diversion Dam: Demolish the existing diversion dam and install a new dam in the same location.
- Replace Diversion Dam Downstream: Demolish the existing diversion dam and install a new diversion dam downstream.
- Replace Diversion Dam Upstream: Demolish the existing diversion dam and install a new diversion dam upstream.
- Diversion Decommissioning: Completely remove the diversion dam from the river and stabilize the diversion site. The existing water rights at the dam would be supplemented via pumping out of the river or other options to provide water to the water rights holders.
- Fish Passage Upstream/Downstream: Construct a passage system(s) on the dam to allow safe upstream and downstream passage of fish over the diversion dam.
- Electric Fish Barrier: Install an electric fish barrier to prevent fish from swimming into the powerhouse and irrigation canal on the west side of the diversion dam.
- Fish Barrier: Install a fish barrier to prevent fish from swimming into irrigation canal on the east side of the diversion dam.
- Boat Passage Upstream/Downstream: Construct a passage system(s) on the dam to allow safe downstream passage of boats past the diversion dam.

NRCS will consider any viable alternatives brought forward during scoping if it is substantially different from the alternatives described above. NRCS will also study a No-Action alternative which would consist of no Federal money used for the rehabilitation of the diversion dam.

Cooperating Agencies—Federal, state, and local agencies that may be interested in or affected by the project may request or be requested by NRCS to become a cooperating agency in the development of the EIS.

Signed this 24th day of May, 2013, in Salt Lake City, Utah.

David C Brown,

Utah State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2013–13062 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Non-Rock Alternatives to Shoreline Protection Demonstration Project (LA–16) Iberia, Jefferson, and Lafourche Parishes, LA

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Non-Rock Alternatives to Shoreline Protection Demonstration Project (LA–16), Iberia, Jefferson, and Lafourche Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: W. Britt Paul, Acting State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: An environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, W. Britt Paul, Acting State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will install and monitor various shoreline protection systems in areas of the state where physical, logistical and environmental limitations preclude the use of rock structures. The shoreline protection systems will be demonstrated in up to three (3) test sites in coastal Louisiana. Up to five (5) ''non-rock'' shoreline protection systems will be installed in 500 linear foot sections at each site, extending a maximum of 4,200 linear feet (including buffer areas) along the shoreline at each site. The sites selected include the western side of the peninsula separating Vermilion and Weeks Bay in Iberia Parish; the southeast shoreline of Lake Salvador in Jefferson Parish; and the western shoreline of Bayou Perot in Lafourche Parish.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting W. Britt Paul.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

W. Britt Paul,

Acting State Conservationist.

[FR Doc. 2013–13060 Filed 5–31–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2013]

Notification of Proposed Production Activity, The Gas Company, LLC dba Hawai'i Gas, Subzone 9F (Synthetic Natural Gas), Kapolei, Hawaii

The Gas Company, LLC dba Hawai'i Gas (Hawai'i Gas), operator of Subzone 9F, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for their facility in Kapolei, Hawaii. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 22, 2013.

The subzone currently has authority to produce synthetic natural gas, carbon dioxide, hydrogen, hydrocarbon gas mixtures and zinc sulfide using certain foreign-status feedstocks produced within Subzone 9A. The current request would allow Hawai'i Gas to admit the feedstocks listed below from any source in foreign status. 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 exempt Hawai'i Gas from customs duty payments on the foreign status components used in export production. On its domestic sales, Hawai'i Gas would be able to choose the duty rates during customs entry procedures that apply to synthetic natural gas, carbon dioxide, hydrogen, hydrocarbon gas mixtures and zinc sulfide (duty rate ranges from duty-free to 3.7%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: mixtures of light petroleum derivative hydrocarbons, including medium to light naphthas; and, crude petroleum oils in the form of natural gas condensates (duty rate 10.5¢/barrel).

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 July 15, 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.

Dated: May 24, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–13091 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–51–2013]

Foreign-Trade Zone (FTZ) 267—Fargo, North Dakota; Notification of Proposed Production Activity; CNH America, LLC (Construction and Agricultural Equipment Production); Fargo, North Dakota

The Fargo Municipal Airport Authority, grantee of FTZ 267, submitted a notification of proposed production activity to the FTZ Board on behalf of CNH America, LLC (CNH), located in Fargo, North Dakota. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 10, 2013.

The CNH facilities are located within Site 2 of FTZ 267. The facilities currently have FTZ authority to produce tractors, wheel loaders, combine subassemblies and related equipment using certain foreign-sourced components. The current request involves additional agricultural and construction equipment, related subassemblies and components. Pursuant to 15 CFR 400.14(b), the additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CNH from customs duty payments on the foreign status components used in export production. On its domestic sales, CNH would be able to choose the duty rates during customs entry procedures that apply to additional agricultural and construction equipment and related subassemblies, including cab units, tractors, steps, undercarriages and track kits for combines, fenders, radiators, undercarriages and frames for tractors, battery doors, hydraulic tanks, draw bars and connecting links (duty rates range from free to 4%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The additional components and materials sourced from abroad include: Rubber hoses/belts/floor mats; rings; cardboard floor pads/protectors/boxes/sheets/packaging; manuals; instruction sheets; pin stops; fittings; screws; washers; clips; ground straps; latches; plates; pumps; valves; fans; bushings; ballast assemblies; heaters; speakers; color monitors; rear view camera and camera kits; sensors; temperature sensor cables; switches; signals; electrical modules and switches; LED lights; radio antenna cable; wire/harness assemblies; bumpers; cab suspension system components; and heater controls (duty rates range from free to 8.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 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 Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 28, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–13089 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports,

sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) Identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Certain Frozen Warmwater Shrimp,[3] A–533–840	2/1/12–1/31/13
Allanasons Ltd.	
India: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid ("HEDP"), A–533–847	4/1/12–3/31/13
Aquapharm Chemicals Pvt. Ltd.	
Russia: Solid Fertilizer Grade Ammonium Nitrate, A–821–811	4/1/12–3/31/13
JSC Acron.	
MCC EuroChem.	
The People's Republic of China: Certain Activated Carbon,[4] A–570–904	4/1/12–3/31/13
AmeriAsia Advanced Activated Carbon Products Co., Ltd.	
Anhui Handfull International Trading (Group) Co., Ltd.	
Anhui Hengyuan Trade Co. Ltd.	
Anyang Sino-Shon International Trading Co., Ltd.	
Baoding Activated Carbon Factory.	
Beijing Broad Activated Carbon Co., Ltd.	
Beijing Haijian Jiechang Environmental Protection Chemicals.	
Beijing Hibridge Trading Co., Ltd.	
Beijing Pacific Activated Carbon Products Co., Ltd.	
Bengbu Jiutong Trade Co. Ltd.	
Calgon Carbon (Tianjin) Co., Ltd.	
Changji Hongke Activated Carbon Co., Ltd.	
Chengde Jiayu Activated Carbon Factory.	
Cherishmet Incorporated.	
China National Building Materials and Equipment Import and Export Corp.	
China National Nuclear General Company Ningxia Activated Carbon Factory.	
China Nuclear Ningxia Activated Carbon Plant.	
Da Neng Zheng Da Activated Carbon Co., Ltd.	
Datong Carbon Corporation.	
Datong Changtai Activated Carbon Co., Ltd.	
Datong City Zuoyun County Activated Carbon Co., Ltd.	
Datong Fenghua Activated Carbon.	
Datong Forward Activated Carbon Co., Ltd.	
Datong Fuping Activated Carbon Co. Ltd.	
Datong Guanghua Activated Co., Ltd.	
Datong Hongtai Activated Carbon Co., Ltd.	
Datong Huanqing Activated Carbon Co., Ltd.	
Datong Huaxin Activated Carbon.	
Datong Huibao Active Carbon Co., Ltd.	
Datong Huibao Activated Carbon Co., Ltd.	
Datong Huiyuan Cooperative Activated Carbon Plant.	
Datong Juqiang Activated Carbon Co., Ltd.	
Datong Kaneng Carbon Co. Ltd.	
Datong Locomotive Coal & Chemicals Co., Ltd.	
Datong Municipal Yunguang Activated Carbon Co., Ltd.	
Datong Tianzhao Activated Carbon Co., Ltd.	
DaTong Tri-Star & Power Carbon Plant.	
Datong Weidu Activated Carbon Co., Ltd.	
Datong Xuanyang Activated Carbon Co., Ltd.	
Datong Zuoyun Biyun Activated Carbon Co., Ltd.	
Datong Zuoyun Fu Ping Activated Carbon Co., Ltd.	
Dezhou Jiayu Activated Carbon Factory.	
Dongguan Baofu Activated Carbon.	

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Dongguan SYS Hitek Co., Ltd.	
Dushanzi Chemical Factory.	
Fu Yuan Activated Carbon Co., Ltd.	
Fujian Jianyang Carbon Plant.	
Fujian Nanping Yuanli Activated Carbon Co., Ltd.	
Fujian Yuanli Active Carbon Co., Ltd.	
Fuzhou Taking Chemical.	
Fuzhou Yihuan Carbon.	
Great Bright Industrial.	
Hangzhou Hengxing Activated Carbon.	
Hangzhou Hengxing Activated Carbon Co., Ltd.	
Hangzhou Linan Tianbo Material (HSLATB).	
Hangzhou Nature Technology.	
Hebei Foreign Trade and Advertising Corporation.	
Hebei Shenglun Import & Export Group Company.	
Hegongye Ninxia Activated Carbon Factory.	
Heilongjiang Provincial Hechang Import & Export Co., Ltd.	
Hongke Activated Carbon Co., Ltd.	
Huaibei Environment Protection Material Plant.	
Huairen Huanyu Purification Material Co., Ltd.	
Huairen Jinbei Chemical Co., Ltd.	
Huaiyushan Activated Carbon Group.	
Huatai Activated Carbon.	
Huzhou Zhonglin Activated Carbon.	
Inner Mongolia Taixi Coal Chemical Industry Limited Company.	
Itigi Corp. Ltd.	
J&D Activated Carbon Filter Co. Ltd.	
Jacobi Carbons AB.	
Jiangle County Xinhua Activated Carbon Co., Ltd.	
Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd.	
Jiangxi Hanson Import Export Co.	
Jiangxi Huaiyushan Activated Carbon.	
Jiangxi Huaiyushan Activated Carbon Group Co.	
Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd.	
Jiangxi Jinma Carbon.	
Jianou Zhixing Activated Carbon.	
Jiaocheng Xinxin Purification Material Co., Ltd.	
Jilin Bright Future Chemical Company, Ltd.	
Jilin Province Bright Future Industry and Commerce Co., Ltd.	
Jing Mao (Dongguan) Activated Carbon Co., Ltd.	
Kaihua Xingda Chemical Co., Ltd.	
Kemflo (Nanjing) Environmental Tech.	
Keyun Shipping (Tianjin) Agency Co., Ltd.	
Kunshan Actview Carbon Technology Co., Ltd.	
Langfang Winfield Filtration Co.	
Link Shipping Limited.	
Longyan Wanan Activated Carbon.	
Mindong Lianyi Group.	
Nanjing Mulinsen Charcoal.	
Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd.	
Ningxia Baota Activated Carbon Co., Ltd.	
Ningxia Baota Active Carbon Plant.	
Ningxia Blue-White-Black Activated Carbon (BWB).	
Ningxia Fengyuan Activated Carbon Co., Ltd.	
Ningxia Guanghua Activated Carbon Co., Ltd.	
Ningxia Guanghua Chemical Activated Carbon Co., Ltd.	
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	
Ningxia Haoqing Activated Carbon Co., Ltd.	
Ningxia Henghui Activated Carbon.	
Ningxia Honghua Carbon Industrial Corporation.	
Ningxia Huahui Activated Carbon Co., Ltd.	
Ningxia Huinong Xingsheng Activated Carbon Co., Ltd.	
Ningxia Jirui Activated Carbon.	
Ningxia Lingzhou Foreign Trade Co., Ltd.	
Ningxia Luyuangheng Activated Carbon Co., Ltd.	
Ningxia Mineral & Chemical Limited.	
Ningxia Pingluo County Yaofu Activated Carbon Plant.	
Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd.	
Ningxia Pingluo Yaofu Activated Carbon Factory.	
Ningxia Taixi Activated Carbon.	
Ningxia Tianfu Activated Carbon Co., Ltd.	
Ninxia Tongfu Coking Co., Ltd.	
Ningxia Weining Active Carbon Co., Ltd.	
Ningxia Xingsheng Coal and Active Carbon Co., Ltd.	

	Period to be reviewed
Ningxia Xingsheng Coke & Activated Carbon Co., Ltd.	
Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Ningxia Yirong Alloy Iron Co., Ltd.	
Ningxia Zhengyuan Activated.	
Nuclear Ningxia Activated Carbon Co., Ltd.	
OEC Logistic Qingdao Co., Ltd.	
Panshan Import and Export Corporation.	
Pingluo Xuanzhong Activated Carbon Co., Ltd.	
Pingluo Yu Yang Activated Carbon Co., Ltd.	
Shanghai Activated Carbon Co., Ltd.	
Shanghai Coking and Chemical Corporation.	
Shanghai Goldenbridge International.	
Shanghai Jiayu International Trading (Dezhou Jiayu and Chengde Jiayu).	
Shanghai Jinhu Activated Carbon (Xingan Shenxin and Jiangle Xinhua).	
Shanghai Light Industry and Textile Import & Export Co., Ltd.	
Shanghai Mebao Activated Carbon.	
Shanghai Xingchang Activated Carbon.	
Shanxi Blue Sky Purification Material Co., Ltd.	
Shanxi Carbon Industry Co., Ltd.	
Shanxi Dapu International Trade Co., Ltd.	
Shanxi DMD Corporation.	
Shanxi Industry Technology Trading Co., Ltd.	
Shanxi Newtime Co., Ltd.	
Shanxi Qixian Foreign Trade Corporation.	
Shanxi Qixian Hongkai Active Carbon Goods.	
Shanxi Sincere Industrial Co., Ltd.	
Shanxi Supply and Marketing Cooperative.	
Shanxi Tianli Ruihai Enterprise Co.	
Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.	
Shanxi Xinhua Activated Carbon Co., Ltd.	
Shanxi Xinhua Chemical Co., Ltd (formerly Shanxi Xinhua Chemical Factory).	
Shanxi Xinhua Protective Equipment.	
Shanxi Xinshidai Import Export Co., Ltd.	
Shanxi Xuanzhong Chemical Industry Co., Ltd.	
Shanxi Zuoyun Yunpeng Coal Chemistry.	
Shenzhen Sihaiweilong Technology Co.	
Sincere Carbon Industrial Co. Ltd.	
Sinoacarbon International Trading Co, Ltd.	
Taining Jinhu Carbon.	
Tangshan Solid Carbon Co., Ltd.	
Tianchang (Tianjin) Activated Carbon.	
Tianjin Century Promote International Trade Co., Ltd.	
Tianjin Channel Filters Co., Ltd.	
Tianjin Jacobi International Trading Co. Ltd.	
Tianjin Maijin Industries Co., Ltd.	
Taiyuan Hengxinda Trade Co., Ltd.	
Tonghua Bright Future Activated Carbon Plant.	
Tonghua Xinpeng Activated Carbon Factory.	
Triple Eagle Container Line.	
Uniclear New-Material Co., Ltd.	
United Manufacturing International (Beijing) Ltd.	
Valqua Seal Products (Shanghai) Co.	
VitaPac (HK) Industrial Ltd.	
Wellink Chemical Industry.	
Xi Li Activated Carbon Co., Ltd.	
Xi'an Shuntong International Trade & Industrials Co., Ltd.	
Xiamen All Carbon Corporation.	
Xingan County Shenxin Activated Carbon Factory.	
Xinhua Chemical Company Ltd.	
Xuanzhong Chemical Industry.	
Yangyuan Hengchang Active Carbon.	
Yicheng Logistics.	
Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Zhejiang Quizhou Zhongsen Carbon.	
Zhejiang Xingda Activated Carbon Co., Ltd.	
Zhejiang Yun He Tang Co., Ltd.	
Zhuxi Activated Carbon.	
Zuoyun Bright Future Activated Carbon Plant.	
The People's Republic of China: Certain Steel Threaded Rod,[5] A–570–932	4/1/12–3/31/13
Aihua Holding Group Co. Ltd.	
Autocraft Industry Ltd.	
Autocraft Industry (Shanghai) Ltd.	
Billion Land Ltd.	
C and H International Corporation.	

	Period to be reviewed
Certified Products International Inc.	
Changshu City Standard Parts Factory.	
China Brother Holding Group Co. Ltd.	
China Jiangsu International Economic Technical Cooperation Corporation.	
EC International (Nantong) Co., Ltd.	
Fastco (Shanghai) Trading Co., Ltd.	
Fastwell Industry Co. Ltd.	
Fuda Xiongzhen Machinery Co., Ltd.	
Fuller Shanghai Co Ltd.	
Gem-Year Industrial.	
Haiyan Dayu Fasterners Co., Ltd.	
Haiyan Evergreen Standard Parts Co. Ltd.	
Haiyan Hurras Import & Export Co. Ltd.	
Haiyan Hurras Import Export Co. Ltd.	
Haiyan Jianhe Hardward Co. Ltd.	
Haiyan Julong Standard Part Co. Ltd.	
Hangzhou Everbright Imp. & Exp. Co. Ltd.	
Hangzhou Grand Imp & Exp. Co., Ltd.	
Hangzhou Great Imp & Exp. Co. Ltd.	
Hangzhou Lizhan Hardware Co. Ltd.	
Hangzhou Tongwang Machinery Co., Ltd.	
Jiabao Trade Development Co. Ltd.	
Jiangsu Zhongweiyu Communication Equipment Co. Ltd.	
Jiashan Steelfit Trading Co. Ltd.	
Jiashan Zhongsheng Metal Products Co., Ltd.	
Jiaxing Brother Fastener Co., Ltd, IFI & Morgan Ltd and RMB Fasteners Ltd.	
Jiaxing Xinyue Standard Part Co. Ltd.	
Jiaxing Yaoliang Import & Export Co., Ltd.	
Jinan Banghe Industry & Trade Co., Ltd.	
Macropower Industrial Inc.	
Midas Union Co., Ltd.	
Nanjing Prosper Import & Export Corporation Ltd.	
New Pole Power System Co. Ltd.	
Ningbiao Bolts & Nuts Manufacturing Co.	
Ningbo Baoli Machinery Manufacture Co., Ltd.	
Ningbo Beilun Milfast Metalworks Co. Ltd.	
Ningbo Dexin Fastener Co. Ltd.	
Ningbo Dongxin High-Strength Nut Co., Ltd.	
Ningbo Fastener Factory.	
Ningbo Fengya Imp. And Exp. Co Ltd.	
Ningbo Haishu Holy Hardware Import and Export Co. Ltd.	
Ningbo Haishu Wit Import & Export Co. Ltd.	
Ningbo Haishu Yixie Import & Export Co. Ltd.	
Ningbo Jinding Fastening Pieces Co., Ltd.	
Ningbo MPF Manufacturing Co. Ltd.	
Ningbo Panxiang Imp. & Exp., Co. Ltd.	
Ningbo Yinzhou Foreign Trade Co., Ltd.	
Ningbo Zhongjiang High Strength Bolts Co. Ltd.	
Ningbo Zhongjiang Petroleum Pipes & Machinery Co., Ltd.	
Prosper Business and Industry Co., Ltd.	
Qingdao Free Trade Zone Health Intl.	
Qingdao Top Steel Industrial Co. Ltd.	
Shaanxi Succeed Trading Co., Ltd.	
Shanghai East Best Foreign Trade Co.	
Shanghai East Best International Business Development Co., Ltd.	
Shanghai Fortune International Co. Ltd.	
Shanghai Furen International Trading.	
Shanghai Nanshi Foreign Economic Co.	
Shanghai Overseas International Trading Co. Ltd.	
Shanghai P&J International Trading Co., Ltd.	
Shanghai Prime Machinery Co. Ltd.	
Shanghai Printing & Dyeing and Knitting Mill.	
Shanghai Printing & Packaging Machinery Corp.	
Shanghai Recky International Trading Co., Ltd.	
Shanghai Sinotex United Corp. Ltd.	
Suntec Industries Co., Ltd.	
T and C Fastener Co. Ltd.	
T and L Industry Co. Ltd.	
Wuxi Metec Metal Co. Ltd.	
Zhejiang Heiter Industries Co., Ltd.	
Zhejiang Heiter MFG & Trade Co. Ltd.	
Zhejiang Jin Zeen Fasteners Co. Ltd.	
Zhejiang Morgan Brother Technology Co. Ltd.	
Zhejiang New Oriental Fastener Co., Ltd.	

	Period to be reviewed
Zhejiang Yanfei Industrial Co., Ltd (a/k/a Jiangsu Ronry Nico Co., Ltd formerly Jiangsu Y Anfei Industrial Co., Ltd).	
The People's Republic of China: Frontseating Service Valves,[6] A–570–933	4/1/12–3/31/13
Zhejiang DunAn Hetian Metal Co., Ltd.	
Zhejiang Sanhua Co., Ltd.	
The People's Republic of China: 1-Hydroxyethylidene-1, 1-Diphosphorice Acid (''HEDP''),[7] A–570–934	4/1/12–3/31/13
Shandong Taihe Chemicals Co., Ltd.	
The People's Republic of China: Magnesium Metal,[8] A–570–896	4/1/12–3/31/13
Tianjin Magnesium International Co., Ltd (''TMI'').	
Countervailing Duty Proceedings	
Turkey: Welded Carbon Steel Pipe and Tube,[9] C–489–502	1/1/12–12/31/12
Borusan Lojistik Dagitim Pepolama Tasimacilik ve Tic A.S.	
Guven Steel Pipe (also known as Guven Celik Boru San. ve Tic Ltd).	
Toscelik Profil ve Sac Endustrisi A.S.	
Umran Celik Boru Sanayii A.S. (also known as Umran Steel Pipe Inc.).	
Yucel Boru ve Profil Endustrisi A.S.	
YucelBoru Ihracat Ithalat ve Pazarlama A.S.	
Cayirova Boru Sanayi ve Ticaret A.S.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://*

[3] Pursuant to the American Shrimp Processors Association's (''ASPA'') request for administrative review, on April 2, 2013, the Department initiated an administrative review of the antidumping duty order on certain frozen warmwater shrimp from India with respect to a company named ''Allansons Ltd'' *See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 78 FR 19639, 19640 (April 2, 2013). On May 8, 2013, the ASPA filed a letter clarifying that it intended to request an administrative review of ''Allanasons Ltd,'' not ''Allansons Ltd'' Consequently, we are correcting the April 2, 2013, notice to initiate the review with respect to Allanasons Ltd rather than Allansons Ltd

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Activated Carbon from the People's Rebublic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Steel Threaded Rod from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Frontseating Service Valves from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of 1-Hydroxyethylidene-1, 1-Diphosphorice Acid (''HEDP'') from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above-named companies does not qualify for a separate rate, all other exporters of Magnesium Metal from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] The company names listed above were misspelled in the initiation notice that published on May 1, 2013 (78 FR 25421). The correct spelling of the company names is listed in this notice.

ia.ita.doc.gov/frn/2013/1304frn/2013–08227.txt, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: May 29, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13071 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* June 3, 2013

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2012, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain new pneumatic off-the-road tires from the People's Republic of China (''PRC'') for the period of review (''POR'') September 1, 2011, through August 31, 2012.[1]

On September 28, 2012, and October 1, 2012, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(b), the Department received a timely request from Shandong Ling Long Tyre Co., Ltd. (''Linglong'') and Hangzhou Zhongce Rubber Co., Ltd. (''Zhongce''), respectively, to conduct an administrative review of the antidumping duty order with regard to its exports to the United States during the POR.

On October 31, 2012, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires, with respect to the above-named companies.[2]

On December 10, 2012, Zhongce timely withdrew its request for a review and, on January 29, 2013, Linglong timely withdrew its request for a review.

Rescission

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. Linglong and Zhongce withdrew their requests for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on new pneumatic off-the-road tires from the PRC for the POR. Therefore, in response to Linglong's and Zhongce's withdrawal of requests for review and pursuant to 19 CFR 351.213(d)(1), we are fully rescinding this review.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. 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 directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 28, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13087 Filed 5–31–13; 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 53863 (September 4, 2012).

[2] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 65858 (October 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–986]

Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation; Correction and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 3, 2013

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Katie Marksberry at (202) 482–3207 or (202) 482–7906, respectively, AD/CVD Operations,

Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background: The Department of Commerce (''the Department'') published a notice in the **Federal Register** on May 3, 2013, concerning the preliminary determination in the antidumping duty investigation of hardwood and decorative plywood from the People's Republic of China.[1]

SUPPLEMENTARY INFORMATION:

Correction of Federal Register Notice

The *Preliminary Determination* listed the combination rates for the respondents which were found to be eligible for a separate rate in this investigation. The Department inadvertently failed to list one supplier for Jiaxing Gsun Imp. & Exp. Co., Ltd. which should have received a separate rate.[2] The combination rate which should have been included in the *Preliminary Determination* is listed below. This combination is in addition to the rates which were published in the *Preliminary Determination* and does not replace any previously published combination rates. Additionally, the Department will issue instructions to Customs and Border Protection correcting the suspension of liquidation instructions that were issued pursuant to the publication of the *Preliminary Determination* to include the below combination rate.

Exporter	Producer	Percent margin
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi Qunxiang Wood Co., Ltd	22.14

Postponement of the Final Determination

The *Preliminary Determination* stated that the Department would issue its final determination no later than 75 days after the date of publication of the *Preliminary Determination,* in accordance with section 773(a)(1) of the Tariff Act of 1930, as amended (''the Act''). The final determination is currently due no later than July 17, 2013.

On April 3, 2013, Xuzhou Jiangyang Wood Industries Co. Ltd, and Xuzhou Jiangheng Wood Products Co. Ltd, and Linyi San Fortune Wood Co. Ltd (collectively, ''Respondents''), requested, pursuant to 19 CFR 351.210(b), a postponement of the final determination and an extension of provisional measures.[3] In accordance with sections 733(d) and 735 (a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of the *Preliminary Determination.* Suspension of liquidation will be extended accordingly.

An extension of 50 days from the current deadline of July 17, 2013, would result in a new deadline of September 5, 2013.

Dated: May 28, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2013–13081 Filed 5–31–13; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for July 2013

The following Sunset Reviews are scheduled for initiation in July 2013 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping Duty Proceedings	
Laminated Woven Sacks from China (A–570–916) (1st Review)	Jennifer Moats, (202) 482–5047.
Non-Malleable Cast Iron Pipe Fittings from China (A–570–875) (2nd Review)	Jenifer Moats, (202) 482–5047.
Sodium Nitrite from China (A–570–925) (1st Review)	Jennifer Moats, (202) 482–5047.
Steel Nails from China (A–570–909) (1st Review)	Jennifer Moats, (202) 482–5047.
Sodium Nitrite from Germany (A–428–841) (1st Review)	David Goldberger, (202) 482–4136.
Countervailing Duty Proceedings	
Laminated Woven Sacks from China (C–570–917) (1st Review)	Dana Mermelstein, (202) 482–1391.
Sodium Nitrite from China (C–570–926) (1st Review)	Dana Mermelstein, (202) 482–1391.

[1] *See Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation,* 78 FR 25946 (May 3, 2013) (''*Preliminary Determination*'').

[2] *See* Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, Senior International Trade Specialist, Office 9; Re: Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Analysis of Ministerial Error Allegations, dated concurrently with this notice.

[3] *See* Letter to the Department, from Respondents, Re: Request for Extension of Final Determination, dated April 3, 2013; *see also* Memorandum to The File, from Katie Marksberry, Senior International Trade Analyst, Re: Phone Call Regarding Clarification of Respondent's Request for an Extension of the Final Determination, dated April 3, 2013.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in July 2013.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 17, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13101 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after June 2013, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its

''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of June 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period of Review
Antidumping Duty Proceedings	
JAPAN:	
Carbon and Alloy Seamless Standard, Line and A–588–850 Pressure Pipe (Over 4½ inches)	6/1/12–5/31/13
Carbon and Alloy Seamless Standard, Line and A–588–851 Pressure Pipe (Under 4½ inches)	6/1/12–5/31/13
SPAIN: Chlorinated Isocyanurates A–469–814	6/1/12–5/31/13
TAIWAN: Helical Spring Lock Washers A–583–820	6/1/12–5/31/13
THE PEOPLE'S REPUBLIC OF CHINA:	
Artist Canvas A–570–899	6/1/12–5/31/13
Chlorinated Isocyanurates A–570–898	6/1/12–5/31/13
Furfuryl Alcohol A–570–835	6/1/12–5/31/13
High Pressure Steel Cylinders A–570–977	12/15/11–5/31/13
Polyester Staple Fiber A–570–905	6/1/12–5/31/13
Prestressed Concrete Steel Wire Strand A–570–945	6/1/12–5/31/13
Silicon Metal A–570–806	6/1/12–5/31/13
Tapered Roller Bearings A–570–601	6/1/12–5/31/13
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders C–570–978	10/18/11–12/31/12
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://trade.gov/ia.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2013. If the Department does not receive, by the last day of June 2013, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 17, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13096 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year reviews (''Sunset Reviews'') of the antidumping and countervailing duty (''AD/CVD'') listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

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

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–351–832	731–TA–953	Brazil	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
C–351–833	701–TA–417	Brazil	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
A–570–910	731–TA–1116	China	Circular Welded Carbon-Quality Steel Pipe (1st Review).	Jennifer Moats (202) 482–5047
C–570–911	701–TA–447	China	Circular Welded Carbon-Quality Steel Pipe (1st Review).	David Goldberger (202) 482–4136
A–560–815	731–TA–957	Indonesia	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
A–201–830	731–TA–958	Mexico	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
A–841–805	731–TA–959	Moldova	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
A–821–817	731–TA–991	Russia	Silicon Metal (2nd Review)	Dana Mermelstein (202) 482–1391
A–274–804	731–TA–961	Trinidad and Tobago.	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047
A–823–812	731–TA–962	Ukraine	Carbon and Certain Alloy Steel Wire Rod (2nd Review).	Jennifer Moats (202) 482–5047

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303. *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials

as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: May 20, 2013.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13095 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Second Review)]

Silicon Metal From Russia; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 3, 2013. Comments on the adequacy of responses may be filed with the Commission by August 16, 2013. For further information

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–287, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 26, 2003, the Department of Commerce issued an antidumping duty order on imports of silicon metal from Russia (68 FR 14578). Following the five-year reviews by Commerce and the Commission, effective July 16, 2008, Commerce issued a continuation of the antidumping duty order on imports of silicon metal from Russia (73 FR 40848). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as all silicon metal, regardless of grade, consistent with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of silicon metal.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site

at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2007.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in short tons of contained silicon and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons of contained silicon and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons of contained silicon and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours

per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2007, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: May 29, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–13097 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC097

Fisheries of the United States; NOAA Fisheries Policy for Modifying Fisheries Closures in the Event of a Public Health Emergency or Oil Spill Characterized by Rapidly Changing Conditions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS issues this notice of availability (NOA) to provide background information and request public comment on potential adjustments to the draft policy.

DATES: Written comments must be received on or before July 3, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0081, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0081,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kimberly A. Marshall, National Marine Fisheries Service, NOAA; 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax* 301–713–1193; *Attn:* Kimberly A. Marshall

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Marshall, Fishery Management Specialist, National Marine Fisheries Service, 301–427–8556.

SUPPLEMENTARY INFORMATION:

Background

In light of experience gained during the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, the NMFS has developed guidance on modifying fisheries closure areas and communicating information regarding those closures to the public during a public health emergency or oil spill characterized by rapidly changing conditions.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c) (MSA), grants the Secretary of Commerce authority to promulgate emergency regulations to address a public health emergency or oil spill. Section 305(c)(3) states:

> (3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—
>
> (A) shall be published in the **Federal Register** together with the reasons therefor;
>
> (B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 186 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;
>
> (C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, *Provided,* That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and
>
> (D) may be terminated by the Secretary at an earlier date by publication in the **Federal Register** of a notice of termination, except for emergency regulations or interim measures promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

Pursuant to this statutory requirement, NMFS has historically implemented emergency fishery closures via emergency rules published in the **Federal Register** that communicate the exact location of the

closed area to the public, including specific GPS coordinates. However, the Deepwater Horizon incident demonstrated that the rapidly changing conditions created by an oil spill or other public health emergency may necessitate frequent modifications to closed areas. In such cases, it may be impossible to make, and provide public notice about, timely modifications of the closed areas by publishing additional emergency rules in the **Federal Register**. This policy addresses alternate means of modifying emergency fisheries closures and how best to provide sufficient notice of those changes to the public.

Objective

The purpose of this notice is to inform the public that, in certain conditions, NMFS may utilize methods other than emergency or interim rulemaking to modify fishery closures established due to an oil spill or public health emergency. The draft policy describes these alternate methods and the circumstances that necessitate their use and offers guidance to the agency with respect to providing adequate notice to the public regarding fishery closure modifications.

Authorities and Responsibilities for Closing Areas to Fishing Activity

This policy establishes the following authorities and responsibilities: In an emergency situation that requires closing areas to fishing, the Secretary of Commerce, through NMFS, will implement the closure by publishing an emergency rule in the **Federal Register** as required by section 305(c)(3) of the MSA, 16 U.S.C. 1855(c). In the case of a public health emergency, the Secretary of Health and Human Services must concur with the Secretary of Commerce's action. If NMFS anticipates that, due to the nature of the emergency, the affected area may change rapidly, the emergency rule will also state the specific procedures and communications methods that will be used to notify the public of any changes to the fisheries closure area (see list below for examples of communications methods). The emergency closure rule will invite public comment on the agency's action and remain in effect until the circumstances that created the emergency no longer exist and a ''notice of termination'' has been published in the **Federal Register**.

Modifications to Areas Closed to Fishing Activity

If necessary, the agency will modify the area closed to fishing based on the current location and anticipated movement of the contamination. Wind speed and direction, currents, waves, and other weather patterns are typical factors that may affect the location of the contaminated area. Such modifications will be made in coordination with relevant local, state, and federal authorities and the public will be notified using the mechanisms specified in the emergency rule establishing the closure.

When revising fishery closures, NMFS will strive to announce the revisions with adequate lead time to allow fishermen to come into compliance with the revised closed area.

Means of Communication

NMFS will announce the coordinates of the initial fisheries closure area and any subsequent revised coordinates or conditions of that closed area using means that are most appropriate to reach the affected public. These may include, but are not limited to:

- NOAA Weather Radio
- Fishery bulletin
- News/Press Releases
- NOAA Web site updates
- Telephone hotline
- Email lists
- Twitter and text alerts

Re-opening a Closed Area and Terminating the Emergency Situation

An area will be reopened when there is no longer a risk of seafood contamination or adulteration as a result of the event that triggered the emergency closure, or when it has been determined that the circumstances that created the emergency no longer exist and the area is deemed safe. NMFS will notify the public that the emergency situation is over and that all closures are terminated by publishing a ''Notice of Termination'' in the **Federal Register**.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this draft policy, NMFS is soliciting written comments on this NOA. The public is encouraged to submit comments related to the specific ideas mentioned in this NOA, as well as any additional ideas and solutions that could improve our process for providing information and updates pertaining to fishery closures in the event of a public health emergency or oil spill under rapidly changing conditions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 28, 2013.

Kara Meckley,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–13112 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC712

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, June 18 through Thursday, June 20, 2013. The meeting will begin at 9 a.m. on Tuesday, and at 8:30 a.m. on both Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775.2311; fax: (207) 761.8224; or online at *www.innbythebay.com/contact.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, June 18, 2013

The Council will begin the first session of its 3-day meeting by receiving brief reports from the NEFMC Chairman and Executive Director, NOAA Fisheries Regional Administrator, the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, as well as NOAA General Counsel, and representatives of the Atlantic States Marine Fisheries Commission, Coast Guard, and NOAA Enforcement. During the Herring Committee report which will follow, the Council intends to initiate Framework Adjustment 3 to the Atlantic Herring Fishery Management Plan (FMP). The report will include alternatives to establish river herring/shad catch caps for the Atlantic herring fishery, a review of the available fishery information, a summary of the May 23, 2013 Herring PDT/Mackerel Monitoring Committee Report, a summary the Mid-Atlantic Fishery Management Council's development of river herring/shad catch caps for the mackerel fishery, and any

related committee recommendations. The Council also will be asked to provide guidance to further develop the Framework 3 alternatives.

Following a lunch break and prior to a NOAA Fisheries Northeast Regional Office (NERO) report on the status of Atlantic sturgeon, there will be an open period for public comments during which any interested party may provide brief remarks on issues relevant to Council business but not listed on the meeting agenda. NERO staff also will present information on a proposed commercial scale mussel farm to be located 8.5 miles off Cape Ann. MA. A summary of the recent Monkfish Operational Assessment update will be presented, followed by the Scientific and Statistical Committee's report. Its chairman will provide an overview of the SSC's discussions about the monkfish assessment and the future development of an Acceptable Biological Catch (ABC) recommendation, as well as the committee's conclusions about the approach used by the Council's Groundfish Closed Area Technical Team to spatially analyze juvenile and spawning protection for key groundfish stocks.

Wednesday, June 19, 2013

The second day of meetings will start with the Northeast Fisheries Science Center's (NEFSC) presentation on Annual Catch Entitlement (ACE) trades and net revenue estimates in the groundfish fishery. NEFSC staff also will provide an update on progress toward developing a full profitability assessment. The Council will discuss Groundfish Committee recommendations concerning the development of Amendment 18 to the Northeast Multispecies FMP, in particular any revisions to the goals and objectives of the amendment. It also may initiate a framework adjustment to the plan to modify rebuilding plans and other measures. The Habitat Committee will ask for final comments concerning a Memorandum of Understanding concerning deep sea corals that is being developed by the New England, Mid-Atlantic and South Atlantic Councils. The Joint Habitat/Groundfish Committee report will include a request for approval of spatial management alternatives for purposes of analysis in the Essential Fish Habitat Omnibus #2 Amendment Draft Environmental Impact Statement. This report will continue until the meeting adjourns for the day.

Thursday, June 20, 2013

Representatives of the Transboundary Management Guidance Committee will discuss options for trading quota under the provisions of the U.S./Canada Resource Sharing Understanding and may ask the Council to develop U.S./Canada trading mechanisms. The Enforcement Committee will review its recommendations concerning a new Council Enforcement Policy (as proposed by NOAA Fisheries and the U.S. Coast Guard), and the issue of minimizing the use of fishing vessel compartments to hide illegal fish. The Monkfish Committee will ask the Council to initiate Framework Adjustment 8 to the Monkfish (FMP). The action would include Annual Catch Targets (ACT), days-a-sea (DAS) and trip limit specifications for the 2014–2016 fishing years, and possibly other changes to the current management program. The report also will provide an update on Amendment 6 to the FMP at which time there could be a request for the removal of the Individually Transferable Quota (ITQ) alternative in that action. Last, the Monkfish Report will include any committee recommendations concerning the monkfish research set-aside research priorities.

After a lunch break, representatives of the Northeast Regional Ocean Council (NROC) will present an overview of the purpose of NROC's series of public meetings, including the draft goals for regional ocean planning and potential actions. Before the NEFMC meeting adjourns, NERO staff will review and ask for Council approval of a draft environmental assessment for the Standard Bycatch Reporting Methodology Omnibus Amendment for the purpose of seeking public comments on the proposed action.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 29, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–13040 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC642

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of correction to a notice of the SEDAR 33 Gulf of Mexico gag and greater amberjack workshops and webinars.

SUMMARY: The SEDAR 33 assessment of the Gulf of Mexico stocks of gag (*Mycteroperca microlepis*) and greater amberjack (*Seriola dumerili*) will consist of: A Data Workshop; an Assessment process conducted via webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The Data Workshop will be held from 1 p.m. on Monday, May 20, 2013 until 12 p.m. on Friday, May 24, 2013 in Tampa, FL. The Assessment Workshop will take place via webinar on the following dates in 2013: July 23; July 29; August 5; August 14; August 21; August 28; September 4; September 11; September 18; September 25; October 2; and October 9. All webinars will begin at 1 p.m. eastern time (ET) and will last approximately four hours. The Review Workshop will take place from 1 p.m. on Monday, November 18, 2013 until 12 p.m. on Thursday, November 21, 2013 in Miami, FL. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting addresses: The Data Workshop will be held at the Tampa Westshore Marriott, 1001 Westshore Plaza Boulevard, Tampa, FL 33607; (813) 287–2555. The Assessment Workshop webinars will be held via GoToWebinar. The Review Workshop will be held at the Doubletree by Hilton Grande Hotel Biscayne Bay, 1717 N. Bayshore Drive, Miami, FL 33132; (305) 372–0313. All workshops and webinars are open to members of the public.

Those interested in participating should contact Ryan Rindone at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing pertinent information. Please request meeting information at least 24 hours in advance.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348–1630; email: *ryan.rindone@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on April 26, 2013 (78 FR 24730). This notice corrects a date of the Assessment Workshop webinar. The date in the original notice in the **DATES** section and also in the **SUPPLEMENTARY INFORMATION** section read July 22 and should be corrected to read July 23. All other previously-published information remains unchanged.

Dated: May 28, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–12971 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC709

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held Monday, June 17, 2013 through Friday, June 21, 2013.

ADDRESSES: The meeting will be held at the Crowne Plaza Pensacola—The Grand hotel, 200 East Gregory Street, Pensacola, FL 32502; telephone: (850) 433–3336.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Committees

Monday, June 17, 2013

1:30 p.m.–2 p.m.—The Red Drum Management Committee will meet to review updated Gulf of Mexico Red Drum Sampling Protocols.

2 p.m.–4 p.m.—The Mackerel Management Committee will meet to review the SEDAR 28 Gulf of Mexico Spanish mackerel and cobia stock assessments and the Coastal Migratory Pelagics Advisory Panel recommendations for Amendment 19 and Amendment 20; and, discuss the schedule and timing for Amendment 22—Recreational and Commercial Allocation of King Mackerel.

4 p.m.–4:30 p.m.—The Administrative Policy Committee will discuss revisions to the SEDAR Administrative Handbook.

4:30 p.m.–5 p.m.—The Full Council in a Closed Session with the Advisory Panel Selection Committee will meet to appoint members to the Coral and SEDAR NGO Advisory Panels.

5 p.m.–5:30 p.m.—The Full Council in a Closed Session with the Scientific and Statistical Selection Committee will meet to appoint members to the SEDAR Workshop Pool; and Special Coral and Special Mackerel Scientific and Statistical Committees.

—Recess—

Tuesday, June 18, 2013

8:30 a.m.–12 noon and 1:30 p.m.–5 p.m.—The Reef Fish Management Committee will review the status of SEDAR 31 Red Snapper Benchmark Assessment and the SSC Recommendations for ABC; receive an Allocation Overview presentation; review Amendment 28—Red Snapper Allocation Scoping Document and Amendment 39—Recreational Red Snapper Regional Management; discuss Amendment 36—Red Snapper IFQ 5-Year Review and the For-Hire Days-at-Sea Pilot Program; receive summaries from the Goliath Grouper Science and Stakeholder Workshops; discuss White Paper on Live Animal Collection for Public Displays; receive a status on the Action to Define For-Hire Fishing Under Contractual Services; and, discuss Exempted Fishing Permits related to Reef Fish (if any).

—Recess—

Immediately following the Committee Recess will be the Informal Question & Answer Session on Gulf of Mexico Fishery Management Issues.

Wednesday, June 19, 2013

8:30 a.m.–11:30 a.m.—The Reef Fish Management Committee will continue to discuss agenda items from the previous day.

—Recess—

1 p.m.–2 p.m.—The Data Collection Committee will take Final Action on the Framework Action for Headboat Electronic Reporting Requirements and review a scoping document for Improving Private Recreational Red Snapper Fisheries Data.

2 p.m.–2:30 p.m.—The Joint Artificial Reef/Habitat Protection Committees will receive a summary and review an Options Paper on Fixed Petroleum Platforms and Artificial Reefs as Essential Fish Habitat.

2:30 p.m.–3:30 p.m.—The Shrimp Management Committee will receive a summary from the May 2013 Shrimp Advisory Panel meeting; and discuss the Framework Action to Establish Funding Responsibilities for the Electronic Logbook Program for the Shrimp Fishery of the Gulf of Mexico.

3:30 p.m.–4:30 p.m.—The Sustainable Fisheries/Ecosystem Management Committee will meet to draft the Framework Action—Update Tier 3 ACLS with New MRIP Landings and discuss Sustainable Seafood Certification.

4:30 p.m.–5:30 p.m.—The Ad Hoc Restoration Committee will receive an update on Gulf State Early Restoration Projects; and review the National Fish and Wildlife Foundation Restoration Project Proposals.

—Recess—

Council

Thursday, June 20, 2013

9 a.m.—The Council meeting will begin with a Call to Order and Introductions.

9:05 a.m.–9:15 a.m.—The Council will review the agenda and approve the minutes.

9:15 a.m.–11:30 a.m.—The Council will receive committee reports from Advisory Panel Selection, Scientific and Statistical Committee Selection; Administrative Policy, Joint Artificial Reef/Habitat Protection, Red Drum and Mackerel.

1 p.m.–5 p.m.—The Council will receive public testimony on Framework Actions to Require Electronic Reporting for Headboats; Framework Action to Establish Funding Responsibilities for the Electronic Logbook Program for Shrimp Fishery of the Gulf of Mexico; and on Reef Fish Amendment 39—Regional Management of Recreational Red Snapper. The Council will also hold an open public comment period regarding any other fishery issues or concerns. People wishing to speak before the Council should complete a

public comment card prior to the comment period.

5 p.m.–5:15 p.m.—The Council will review and vote on Exempted Fishing Permits (EFP), if any.

—Recess—

Friday, June 21, 2013

8:30 a.m.–12:15 p.m.—The Council will continue to receive committee reports from Data Collection, Sustainable Fisheries/Ecosystem, Shrimp and Reef Fish.

12:15 p.m.–12:45 p.m.—The Council will review Other Business items: summary from each of the following conferences; Managing Our Nation's Fisheries 3, South Atlantic Fishery Management Council's June 2013 meeting, Southeast Fisheries Science Center (SEFSC) Data Program Review, Marine Resource Education Program (MREP) Science Workshop and the May 2013 Council Coordination Committee (CCC) meeting.

12:45 p.m.–1 p.m.—The Council will review the Action Schedule.

— Adjourn—

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 28, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–12963 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA833

Marine Mammals; File No. 10018

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 10018–01 has been issued to Rachel Cartwright, Ph.D., Keiki Kohola Project, Oxnard, California.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 21, 2011, notice was published in the **Federal Register** (76 FR 71938) that a request for an amendment Permit No. 10018–01 to conduct research on humpback whales (*Megaptera novaeangliae*) had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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).

Permit No. 10018, issued on June 18, 2008 (73 FR 36042) and amended on July 14, 2010 (75 FR 43150), authorizes Dr. Cartwright to conduct humpback whale research, consisting of photo-identification, focal follows, underwater observations, and collection of sloughed skin, in Hawaiian and Alaskan waters from May through September each year. The permit has been amended to authorize the deployment of suction cup satellite tags to a maximum of 18 females in female-calf pairs. Tagging may only occur in Hawaii. The purposes of the tagging activities are to: (1) Verify the impact of research vessels during boat based behavioral follows and (2) further understand how female-calf pairs use breeding ground habitat, potentially identifying key resting regions and establishing the degree to which female-calf pairs circulate within vs. move between specific favored female-calf regions. Although the amendment request originally included attaching six implantable satellite tags to yearling humpback whales, this portion of the request was withdrawn by the applicant is not included in the amended permit. The amended permit expires on June 30, 2013.

A supplemental environmental assessment (SEA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the SEA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 9, 2013.

As required by the ESA, issuance of this permit 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 species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 28, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–12977 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Recruitment of First Responder Network Authority Board of Directors

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice on behalf of the First Responder Network Authority (FirstNet) as part of its annual process to seek expressions of interest from individuals who would like to serve on the FirstNet Board.[1] When the Acting Secretary of Commerce made the initial appointments to the Board last August 20, 2012, by law, four of the 12 appointments of non-permanent members were for one-year terms.[2] While the Secretary of Commerce has the discretion to reappoint individuals to serve on the FirstNet Board provided they have not served two consecutive full three-year terms,[3] NTIA issues this Notice in case the Secretary will need to fill any vacancies on the Board at the time the one-year terms expire on August 19, 2013. Expressions of interest for appointment to the FirstNet Board will be accepted until June 14, 2013.

DATES: Expressions of Interest must be postmarked or electronically transmitted on or before June 14, 2013.

ADDRESSES: Persons wishing to submit expressions of interest as described below should send that information to: Uzoma Onyeije, FirstNet Board Secretary by email to *FirstNetBoard@ntia.doc.gov;* by U.S. mail or commercial delivery service to: Office of Public Safety Communications, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; or by facsimile transmission to (202) 501–0536. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, FirstNet Board Secretary, c/o National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; telephone: (202) 482–0016; email: *uonyeije@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created the First Responder Network Authority (FirstNet) as an independent authority within NTIA and authorizes it to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (PSBN) based on a single, national network architecture.[4] FirstNet is responsible for, at a minimum, ensuring nationwide standards for use and access of the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-federal entities to build, operate, and maintain the network.[5] FirstNet holds the single public safety license granted for wireless public safety broadband deployment. The FirstNet Board is responsible for making strategic decisions about FirstNet's operations and ensuring the success of the nationwide network.

II. Structure

The FirstNet Board is composed of 15 voting members. The Act names the U.S. Attorney General, the Director of the Office of Management and Budget, and the Secretary of the Department of Homeland Security as permanent members of the Board. On August 20, 2012, Acting Secretary of Commerce Rebecca M. Blank announced her appointment of the 12 non-permanent members of the FirstNet Board.[6] Each member of this diverse group brings considerable public safety experience, or network, technology, and/or financial expertise as the Act requires.[7] Additionally, the composition of the FirstNet Board satisfies the other requirements specified in the Act, including that: (i) At least three Board members have served as public safety professionals; (ii) at least three members represent the collective interests of states, localities, tribes, and territories; and (iii) its members reflect geographic and regional, as well as rural and urban, representation.[8] An individual Board member may satisfy more than one of these requirements. The current non-permanent FirstNet Board members are (noting length of term):

- Tim Bryan, CEO, National Rural Telecommunications Cooperative (3 years)
- Charles ''Chuck'' Dowd, Assistant Chief, New York City Police Department (2 years)
- F. Craig Farrill, wireless telecommunications executive (3 years)
- Paul Fitzgerald, Sheriff, Story County, Iowa (2 years)
- Samuel ''Sam'' Ginn, telecommunications executive (2 years)
- Jeffrey Johnson, Fire Chief (retired); former Chair, State Interoperability Council, State of Oregon; CEO, Western Fire Chiefs Association (1 year)
- William Keever, telecommunications executive (retired) (1 year)
- Kevin McGinnis, Chief/CEO, North East Mobile Health Services (3 years)
- Ed Reynolds, telecommunications executive (retired) (2 years)
- Susan Swenson, telecommunications/technology executive (1 year)
- Teri Takai, government information technology expert; former CIO, States of Michigan and California (1 year); and
- Wellington Webb, Founder, Webb Group International; former Mayor, Denver, Colorado (3 years).

Initial, non-permanent Board members serve staggered terms of one, two, or three years. Subsequent Board members will be appointed for a term of three years, and Board members may not serve more than two consecutive full three-year terms.

[1] The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created FirstNet as an independent authority within NTIA that will establish a single nationwide interoperable broadband network. Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (''Act''), *to be codified* at 47 U.S.C. 1401 *et. seq.* The Act requires that FirstNet be led by a 15-person Board, with the Secretary of Homeland Security, the Attorney General, and the Director of the Office of Management and Budget serving as permanent members of the Board. 47 U.S.C. 1424(b)(1).

[2] Congress charged the Secretary of Commerce with appointing 12 non-permanent members. 47 U.S.C. 1424(b)(1)(D). The Act states that the term of all non-permanent FirstNet Board members is three years. 47 U.S.C. 1424(c)(2)(A)(ii). However, the terms of the inaugural non-permanent FirstNet Board members are staggered, with four members serving three years, four serving two years, and four serving one year. 47 U.S.C. 1424(c)(2)(D).

[3] 47 U.S.C. 1424(c)(2)(A)(ii), providing that no appointed member of the FirstNet Board may serve more than two consecutive full three-year terms. A Board member whose initial appointment was for either one or two years may still serve two three-year terms beyond his or her initial appointment.

[4] 47 U.S.C. 1422(b).

[5] 47 U.S.C. 1426(b)(1).

[6] 47 U.S.C. 1424(b).

[7] 47 U.S.C. 1424(b)(2)(B).

[8] 47 U.S.C. 1424(b)(2)(A).

III. Compensation and Status as Government Employees

FirstNet Board members are appointed as federal government employees. FirstNet Board members are compensated at the daily rate of basic pay for level IV of the Executive Schedule (approximately $155,000 per year).[9] Each Board member must be a United States citizen, cannot be a registered lobbyist, and cannot be a registered agent of, employed by, or receive payments from, a foreign government. The Board meets at the call of the Chair and not less than once each quarter.[10]

IV. Financial Disclosure and Conflicts of Interest

FirstNet Board members are required to comply with certain federal conflict of interest statutes and ethics regulations, including some financial disclosure requirements. FirstNet Board members will generally be prohibited from participating on any particular matter that will have a direct and predictable effect on his or her personal financial interests or on the interests of the appointee's spouse, minor children, or non-federal employer. FirstNet Board candidates may be subject to an appropriate background check for security clearance.

V. Selection Process

By this Notice, the Secretary of Commerce, through NTIA, will accept expressions of interest until June 14, 2013 from any individual, or any organization who wishes to propose a candidate, who satisfies the statutory requirements for membership on the FirstNet Board. All parties wishing to be considered should submit their full name, address, telephone number, email address, a current resume, and a statement of qualifications that references the Act's eligibility requirements for FirstNet Board membership, as described in this Notice, along with a statement describing why they want to serve on the FirstNet Board and their ability to take a regular and active role in the Board's work.

NTIA will screen all submissions and forward the most qualified candidates to the FirstNet Board for consideration. The FirstNet Board will review and evaluate these candidates as it prepares and submits its recommendations to the Secretary of Commerce as to whom to appoint in August 2013.

The Secretary of Commerce will select FirstNet Board candidates to fill any vacancies arising on the FirstNet Board based on the eligibility requirements in the Act and on the input and recommendations from the FirstNet Board. Board candidates will be evaluated based on their ability to contribute to the goals and objectives of FirstNet as set forth in the Act. Board candidates will be vetted through the Department of Commerce.

Dated: May 29, 2013.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2013–13073 Filed 5–31–13; 8:45 am]

BILLING CODE 3510–60–P

[9] 47 U.S.C. 1424(g).

[10] 47 U.S.C. 1424(e).

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Policy).

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces the following Federal advisory committee meeting of the Defense Policy Board (hereafter referred to as ''the DPB'').

DATES: *Quarterly Meeting:* From Tuesday, June 18, 2013 (8:00 a.m. to 6:00 p.m.) through Wednesday, June 19, 2013 (7:30 a.m. to 10:15 a.m.), the DPB will hold a quarterly meeting under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and the Federal Advisory Committee Management; Final Rule 41 CFR Parts 101–6 and 102–3.

ADDRESSES: The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 2000 Defense Pentagon, Washington, DC 20301–2000, Phone: (703) 571–9232.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the DPB's mission to advise on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary or the Under Secretary of Defense for Policy.

Meeting Agenda: Beginning at 8:00 a.m. on June 18 through the end of the meeting on June 19 the DPB will have secret through top secret (SCI) level discussions on national security issues regarding strategic choices within budgetary constraints and security cooperation.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the Department of Defense FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of 5 U.S.C. 552b(c)(1) and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or classified material.

Committee's Designated Federal Officer or Point of Contact: Ann Hansen, *defense.policy.board@osd.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written statements to the membership of the DPB at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer; the Designated Federal Officer's contact information is listed in **FOR FURTHER INFORMATION CONTACT** or it can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the DPB 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 five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: May 29, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–13015 Filed 5–31–13; 8:45 am]

BILLING CODE 5001–06–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: Thursday, June 27, 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. Gout Agents
   b. Pulmonary—2 Agents: COPD
   c. Tobacco Cessation Agents
   d. Pulmonary—2 Agents
   e. Designated Newly Approved Drugs in Already-Reviewed Classes
   1. Non-insulin Diabetes Drugs: canagliflozin (Invokana)
   f. 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.

Dated: May 29, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–13021 Filed 5–31–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Summer Study Session

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

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 announces the following committee meeting:

1. *Name of Committee:* Army Science Board (ASB).
2. *Date:* Wednesday, July 17, 2013.
3. *Time:* 9:00 am–12:00 pm.
4. *Location:* Antlers Hilton, Four South Cascade, Colorado Springs, Colorado 80903–1685.
5. *Purpose of Meeting:* The purpose of the meeting is for Army Science Board members to review, deliberate and vote on the findings and recommendations for the FY13 Army Science Board Reports.
6. *Agenda:* The board will present findings and recommendations for deliberation and votes on the following four studies:

Army Science and Technology Core Competencies study 2013—This study evaluates what science and technology competencies the Army must maintain and/or develop as core competencies.

Evaluation of the Army's use of Predictive Data study 2013—This study examines and evaluates the data, models and algorithms used for predictive analysis and the related potential human and ethical dimensions.

Planning for Climate Change study 2013—This study considers the most likely climate change scenarios and assesses how the changes might change the way the Army fights, not just tactically but also considering all the Title 10 functions, to include manning, training and equipping.

Towards Creating an Innovation Culture study 2013—This study examines the issue of innovation in the Army in the context of developing creativity, flexibility and adaptability throughout the Institutional Army, without creating a new organizational construct.

7. *Committee's Designated Federal Officer or Point of Contact:* COL David Trybula, *david.c.trybula.mil@mail.mil* and 703.614.0849.

FOR FURTHER INFORMATION CONTACT: Army Science Board Designated Federal Official, 2530 Crystal Drive, Suite 7098. Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until its next meeting.

The DFO will review all timely submissions with the subcommittee Chairs and ensure they are provided to the specific subcommittee members before the meeting. After reviewing written comments, the subcommittee Chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the subcommittee Chairs, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–13100 Filed 5–31–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Predominantly Black Institutions Program

AGENCY: Office of Postsecondary Education (OPE), 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; an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 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–0036 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: Application for Grants Under the Predominantly Black Institutions Program.

OMB Control Number: 1840–0812.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 35.

Total Estimated Number of Annual Burden Hours: 700.

Abstract: The Higher Education Opportunity Act of 2008 amended Title III, Part A of the Higher Education Act to include Section 318—The Predominantly Black Institutions (PBI) Program. The PBI Program makes 5-year grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institutions capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students. The Department will use the data collected in the PBI Application to evaluate the projects submitted by the specified institutions of higher education and to determine allowable multi-year project expenses based on statutory requirements.

Dated: May 28, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12988 Filed 5–31–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0071]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Education Progress (NAEP) 2014–2016 System Clearance

AGENCY: Institute of Education/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 new generic information collection request under the approved

generic information collection systems clearance.

DATES: Interested persons are invited to submit comments on or before July 3, 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–0071 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: National Assessment of Education Progress (NAEP) 2014–2016 System Clearance.

OMB Control Number: 1850–0790.

Type of Review: A new generic information collection request under the approved generic information collection systems clearance.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 33,927.

Total Estimated Number of Annual Burden Hours: 13,963.

Abstract: The National Assessment of Educational Progress (NAEP) is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, and the arts. In the current legislation that reauthorized NAEP (20 U.S.C. 9622), Congress again mandated the collection of national education survey data through a national assessment program. This request is an information collection that falls under the approved systems clearance, 1850–0790. The 2014 Wave 1 submittal contains the following:

- the grades 4, 8, and 12 core (demographic) student questions,
- the grade 8 civics, geography, and U.S. history subject-specific student questions,
- the grades 4, 8, and 12 pilot science subject-specific student questions,
- the grades 4 and 8 teacher questionnaires, and
- the grades 4, 8, and 12 school questionnaires.

The 2014 submittal is divided into two waves to meet scheduling and question development requirements. The first wave contains the core, social studies (civics, geography, U.S. history), and science (paper-and-pencil) descriptions, burden, and questionnaires. Wave 2 will contain technology and engineering literacy (TEL) and science ICT (interactive computer tasks) descriptions, burden, and materials, as well as information regarding school coordinator activities, including the collection of information on students with disabilities (SD) and English language learners (ELL). The purpose of NAEP is to collect and report assessment data on student achievement in the subject areas assessed for use in monitoring educational progress. In addition to reporting overall results of student performance and achievement, NAEP also reports student performance results for various subgroups of students and on various educational factors.

Dated: May 28, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12997 Filed 5–31–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0074]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native Hawaiian Career and Technical Education Grant Application (NHCTEP) (1894–0001)

AGENCY: Office of Vocational and Adult Education (OVAE), 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 reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before July 3, 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–0074 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 2E115, 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: Native Hawaiian Career and Technical Education Grant Application (NHCTEP) (1894–0001).

OMB Control Number: 1830–0564.

Type of Review: a reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: This is a request to reinstate an information collection without change. The purpose of the information collection is to solicit applications for funding under the Native Hawaiian Career and Technical Education Program (NHCTEP) discretionary grant program. This program provides financial assistance to projects that offer career and technical education and related activities for the benefit of Native Hawaiians. Native Hawaiian community-based organizations are the only eligible applicants. The program is authorized by section 116 (h) of the Carl D. Perkins Career and Technical Education Act of 2006 (Pub. L. 109–270).

Dated: May 28, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12993 Filed 5–31–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0073]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Magnet Schools Assistance Program Application for Grants (1894–0001)

AGENCY: Office of Innovation and Improvement (OII), 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 3, 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–0073 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: Magnet Schools Assistance Program Application for Grants (1894–0001).

OMB Control Number: 1855–0011.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 150.

Total Estimated Number of Annual Burden Hours: 6,000.

Abstract: The Magnet Schools Assistance program provides grants to eligible local educational agencies to establish and operate magnet schools that are operated under a court-ordered or federally approved voluntary desegregation plan. These grants assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of minority group isolation in elementary and secondary schools with substantial numbers of minority group students. In order to meet the statutory purposes of the program under Title V of the Elementary and Secondary Education Act, projects also must support the development and implementation of magnet schools that assist in the achievement of systemic reforms and provide all students with the opportunity to meet challenging academic content and student academic achievement standards. Projects support the development and design of innovative education methods and practices that promote diversity and increase choices in public education programs. The program supports capacity development the ability of a school to help all its students meet more challenging standards through professional development and other activities that will enable the continued operation of the magnet schools at a high performance level after funding ends. Finally, the program supports the implementation of courses of instruction in magnet schools that strengthen students knowledge of academic subjects and their grasp of tangible and marketable vocational skills.

Dated: May 28, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12994 Filed 5–31–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training and Information for Parents of Children With Disabilities—Technical Assistance for Parent Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

Training and Information for Parents of Children with Disabilities—Technical Assistance for Parent Centers Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328R.

DATES: Applications Available: June 3, 2013.

Deadline for Transmittal of Applications: July 18, 2013.

Deadline for Intergovernmental Review: September 16, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in the statute (see sections 671, 672, 673, and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

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.

This priority is: *Technical Assistance for Parent Centers.*

Background:

The purpose of this priority is to fund eight cooperative agreements to support the establishment and operation of eight Technical Assistance Centers for Parent Centers (PTACs) in three focus areas. Section 673 of IDEA authorizes the provision of technical assistance (TA) for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers (PTIs) receiving assistance under section 671 of IDEA and community parent resource centers (CPRCs) receiving assistance under section 672 of IDEA, collectively referred to as ''parent centers.''

The 100 parent centers currently funded by the Department of Education (Department) promote the effective education of infants, toddlers, children, and youth with disabilities by ''strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home'' (section 601(c)(5)(B) of IDEA). Parent centers provide information, individual assistance, and training that enable parents to (1) ensure that their children are included in general education classrooms and extracurricular activities with their peers; (2) help their children meet developmental and academic goals; (3) help their children meet challenging expectations established for all children, including college- and career-ready standards; and (4) prepare their children to achieve positive postsecondary outcomes that lead to lives that are as productive and independent as possible (section 601(c)(5)(A) of IDEA). In the 30 years since the Department funded the first parent center, parent centers, consistent with section 671(b) of IDEA, have successfully helped families navigate systems providing early intervention, special education, general education, postsecondary options, and related services; understand the nature of their children's disabilities; learn about their rights and responsibilities under IDEA; expand their knowledge of evidence-based education practices to help their children succeed; strengthen their collaboration with professionals; locate resources available for themselves and their children; and advocate for improved student achievement, increased graduation rates, and improved postsecondary outcomes for all children through participation in school reform activities. In addition, parent centers have helped youth with disabilities understand their rights and responsibilities and learn self-advocacy skills.

Technical Assistance Centers for Parent Centers (PTACs) provide support to parent centers' to carry out these statutorily required activities and, in doing so, help parents participate in the education of their children at school and at home, thereby improving outcomes for children with disabilities. Section 673(b) of IDEA also lists areas in which parent centers may need TA: (1) Coordinating parent training efforts; (2) disseminating scientifically based research and information; (3) promoting the use of technology, including assistive technology devices and assistive technology services; (4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities; (5) including children with disabilities in general education programs; (6) facilitating all transitions from early intervention through postsecondary environments; and (7) promoting alternative methods of dispute resolution, including mediation.

Parent centers may also benefit from TA on the most current information on laws, policies, and evidence-based education practices affecting children with disabilities; how data can be used to inform instruction; how to interpret results from evaluations and assessments; and ways to effectively engage in school reform activities, including how to interpret and use the data that informs those activities. Ongoing TA, responsive to the individual needs of parent centers, builds parent center staff knowledge and expertise on these topics. In addition, since many parent centers are grassroots organizations with small budgets, they may benefit from TA on managing a Federal grant, maximizing efficiencies, and meeting complex statutory and regulatory requirements for nonprofits.

Parent centers also need support to increase their capacity to reach and provide services to all parents of children with disabilities, particularly parents of infants, toddlers, preschool children and transition-age youth; youth with disabilities; parents with limited English proficiency; underserved parents; and Native American parents. The following Web site provides more information on the current parent centers and PTACS, including links to each grantee's Web site: *www.parentcenternetwork.org.*

In order to ensure that parent centers receive the TA they need to increase their knowledge and capacity to provide services to parents and youth effectively and efficiently, the Department plans to build on the work of the currently funded PTACs and Native American PTI by funding eight PTACs: A Center for Parent Information and Resources; six Regional PTACs; and a Native American PTAC.

Center for Parent Information and Resources (CPIR). The CPIR will focus

on disseminating resources [1] to all parent centers, providing universal TA [2] on the use of those resources, and supporting parent centers in the annual data collection required under section 671(b)(12) of IDEA. The CPIR will develop products [3] for parent centers to use when providing services to parents and youth and maintain a central repository of other available resources that parent centers can use to better manage their work and help support and train parents and youth. The products the CPIR provides will contain up-to-date, accurate, family-centered information. Providing these products and resources to parent centers will allow them to focus their time and effort on providing services to families, rather than on developing products and resources. In addition, a central source of products and resources will minimize duplication, help ensure consistency in the quality of the information parents and youth receive while still allowing flexibility for parent centers to modify the products and resources to meet their needs, and facilitate better coordination among the parent centers.

Regional PTACs. In addition to the CPIR, the Department will fund six Regional Technical Assistance Centers for Parent Centers (Regional PTACs). Each Regional PTAC will provide differentiated targeted TA [4] and intensive TA [5] directly to parent centers that meet the unique needs of each parent center in its region. The TA will focus on increasing parent centers' capacity to effectively manage their work, reach more parents and youth, and help parents improve outcomes for their children. The Regional PTACs will not develop new products and resources for the parent centers to use when providing services directly to parents. However, Regional PTACs may develop products and resources to be used in management and capacity-building activities with the parent centers in its region, such as management decision matrices, templates to respond to information requests, self-assessment rubrics, or materials for presentations to parent center staff and board members.

The parent centers served by the Regional PTACs align with the States served by the Regional Resource Centers funded under the IDEA and administered by the Department's Office of Special Education (OSEP).[6] This alignment will help the Regional PTACs meet the requirement in section 673(c) of IDEA that the Regional PTACs develop collaborative agreements with the geographically appropriate Regional Resource Centers.

Native American Technical Assistance Center for Parent Centers (Native American PTAC). Finally, the Department will fund a Native American PTAC to focus on building the capacity of parent centers to provide effective and culturally appropriate services to Native American [7] parents of children with disabilities and Native American youth with disabilities. In order to effectively support Native American parents and youth, staff at parent centers need to be knowledgeable about how Native American culture affects the training and information needs of Native American families who have a child with a disability, the varied experiences of Native American families raising a child with a disability and living on a reservation or in an urban area, and the policies governing the delivery of services to children with disabilities by early intervention programs and schools managed by the Bureau of Indian Education (BIE) and tribal governments. The Native American PTAC will provide universal TA to all parent centers on providing effective, culturally responsive services to Native American parents of children with disabilities, as well as to youth with disabilities. The Native American PTAC will also provide differentiated, targeted, and intensive TA to parent centers requesting additional support to build their capacity to provide services to Native American parents of children with disabilities and Native American youth with disabilities.

In addition to the three focus areas in this priority (CPIR, Regional PTACs, Native American PTAC) there are three competitive preference priorities within this priority. For an applicant under Focus Area 2 or 3, Regional PTACs or the Native American PTAC, the first competitive preference priority will award an additional five points if the applicant is a nonprofit organization that meets the IDEA definition of a ''parent organization''.[8] We believe such an organization will understand the day-to-day challenges of managing a parent center and providing services to families.

For an applicant under Focus Area 2, Regional PTACs, the second competitive preference priority will award an additional five points if the applicant is located in the region that it proposes to serve. We believe such an organization will understand regional needs and perspectives, and use its travel budget more efficiently.

For an applicant under Focus Area 3, the Native American PTAC, the third competitive preference priority will

[1] As used in this priority, ''resources'' means sources of information or expertise that help parent centers carry out their work. Resources are used by parent center staff and are generally not provided to families. Examples of resources include guides for trainers to use a specific curriculum, a listing of parent center staff expertise, and open source Web templates, among others.

[2] As used in this priority, ''universal TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff. This category of TA includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the PTAC's Web site by independent users. Brief communications by PTAC staff with recipients, either by telephone or email, are also considered universal, general TA. The following Web site provides more information on levels of TA: *www.tadnet.org.*

[3] A product is a piece of work, in text or electronic form, developed and disseminated by a project to inform a specific audience on a topic relevant to the improvement of outcomes for children with disabilities. Examples of products include journal or informational articles, booklets, pamphlets, manuals, DVDs, CDs, multimedia kits or modules, and PowerPoint presentations.

[4] As used in this priority, ''targeted TA'' means TA services developed based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA can be one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national meetings. TA can also be episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA. The following Web site provides more information on levels of TA: *www.tadnet.org.*

[5] As used in this priority, ''intensive TA'' means TA services often provided on-site and requiring a stable, ongoing, negotiated relationship between the TA center staff and the TA recipient. The TA relationship is defined as a purposeful, planned series of activities designed to reach an outcome that is valued by the individual recipient. This category of TA results in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more levels. The following Web site provides more information on levels of TA: *www.tadnet.org.*

[6] For more information on the Regional Resource Center Program, go to *www.rrcprogram.org.*

[7] ''Native American,'' as used in this priority, refers to American Indians, Alaska Natives, Native Hawaiians, and other Pacific Islanders. For more information, go to *www.census.gov/population/race/.*

[8] Section 671(a)(2) of IDEA defines a ''parent organization'' as a private nonprofit organization (other than an institution of higher education) that—

(A) Has a board of directors—

(i) The majority of whom are parents of children with disabilities ages birth through 26;

(ii) That includes—

(I) Individuals working in the fields of special education, related services, and early intervention;

(II) Individuals with disabilities; and

(III) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(B) Has as its mission serving families of children with disabilities who—

(i) Are ages birth through 26; and

(ii) Have the full range of disabilities described in section 602(3) of IDEA.

award five additional points if the applicant is a nonprofit organization administered by a board of directors, the majority of whom are Native Americans. We believe that a board of directors with Native American members is critical to ensuring that the TA provided by the Native American PTAC will focus on the important issues faced by Native American families who have children with disabilities, and Native American youth with disabilities.

Priority:

This priority will fund eight cooperative agreements to support the establishment and operation of eight PTACs in three focus areas. Under Focus Area 1, the Department intends to fund one CPIR. The CPIR, must, at a minimum: (a) Increase parent centers' knowledge of: Evidence-based education practices that improve early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reform efforts to improve student achievement and increase graduation rates; the use of data to inform instruction and advance school reform efforts; and best practices in nonprofit management, outreach, family-centered services, self-advocacy skill building, and the use of technology in service provision and nonprofit management; and (b) increase the coordination of parent training efforts.

Under Focus Area 2, the Department intends to fund six Regional PTACs. Regional PTACs must, at a minimum, increase the capacity of the parent centers in their geographic areas to (a) reach and provide services to parents of children with disabilities and youth with disabilities, and (b) effectively manage their centers. The six Regional PTACs will be awarded to represent the following six geographic regions:

Region 1 PTAC: CT, ME, MA, NH, NJ, NY, PA, RI, VT.

Region 2 PTAC: DE, KY, MD, NC, SC, TN, VA, DC, WV.

Region 3 PTAC: AL, AR, FL, GA, LA, MS, OK, Puerto Rico, TX, U.S. Virgin Islands.

Region 4 PTAC: IL, IN, IA, MI, MN, MO, OH, WI.

Region 5 PTAC: AZ, CO, KS, MT, NE., ND, NM, SD, UT, WY.

Region 6 PTAC: AK, CA, HI, ID, NV, OR, WA, the outlying areas of the Pacific Basin, and the Freely Associated States.

Under Focus Area 3, the Department intends to fund one Native American PTAC. The Native American PTAC must, at a minimum: (a) Increase knowledge in parent centers of how to provide effective, culturally responsive services that meet the needs of Native American parents of children with disabilities and Native American youth with disabilities and that lead to improvements in early learning, school-aged, and postsecondary outcomes; and (b) increase the capacity of parent centers to reach and provide services to Native American parents and youth in their areas.

To be considered for funding under this priority, an applicant must meet the application, programmatic, and administrative requirements of the focus area for which it applies. An applicant may submit separate applications in more than one focus area; however, an applicant is limited to only one application in each focus area.

Focus Area 1: The requirements for this focus area, the CPIR, are as follows:

(a) Demonstrate, in the narrative section of the application, under ''Significance of the Project'' how the project—

(1) Addresses parent centers' needs for universal TA on the following: Evidence-based education practices that improve early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reform efforts to improve student achievement and increase graduation rates; the use of data to inform instruction and advance school reform efforts; and best practices in nonprofit management, outreach, family-centered services, self-advocacy skill building, and the use of technology in service provision and nonprofit management. To address this requirement the applicant must—

(i) Present information on the needs of all parent centers;

(ii) Demonstrate knowledge of best practices on providing training and information to a variety of audiences, to include parents from diverse backgrounds and youth with disabilities;

(iii) Demonstrate knowledge of current evidence-based education practices and policy initiatives in early childhood, general and special education, transition services, and postsecondary options;

(iv) Demonstrate knowledge of current best practices in outreach, family-centered services, self-advocacy skill building, nonprofit management, and the use of technology in service provision and nonprofit management; and

(v) Demonstrate knowledge of current Office of Special Education Programs (OSEP) Technical Assistance and Dissemination (TA&D) projects, including the Regional Resource Center (RRC) program, among others; and

(2) Will result in more coordinated and effective efforts among the parent centers.

(b) Demonstrate, in the narrative section of the application, under ''Quality of the Project Services'' how the project will—

(1) Conduct a national assessment of the needs of parent centers for—

(i) Knowledge of evidence-based education practices that improve early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reform efforts to improve student achievement and increase graduation rates; the use of data to inform instruction and advance school reform efforts; and best practices in nonprofit management, outreach, family-centered services, self-advocacy skill building, and the use of technology in service provision and nonprofit management, among others; and

(ii) Resources and products to train and inform (a) families of parental rights, evidence-based education practices, and school reform efforts; and (b) youth of their rights and responsibilities under IDEA, as well as increase their self-advocacy skills.

Note: The methods and tools that will be used to conduct the national needs assessment will be finalized in consultation with the Regional PTACs, the Native American PTAC, and the OSEP project officers in order to assure coordination and avoid duplication;

(2) Use a conceptual framework [9] and project logic model (see paragraph (f)(1) of this focus area) to guide the development of project plans and activities;

(3) Create, update, and maintain an online, annotated repository of resources produced by the CPIR, parent centers, OSEP-funded projects, other Department-funded projects, and other federally funded projects for parent centers' use with families, youth, staff members, members of the boards of directors, and professionals;

(4) Develop a process for creating new resources for parent centers to use with families, youth, staff members, members of the boards of directors, and professionals that ensures resources—

(i) Are responsive to the changing needs of parent centers;

[9] As used in this priority, ''conceptual framework'' means ''a visual representation of the conceptual context(s) that supports and informs the work of a system, program, or intervention, including its underlying concepts, assumptions, expectations, beliefs or theories, as well as the presumed relationship or linkages among these variables.'' The following Web site provides more information on conceptual frameworks: *www.tadnet.org.*

(ii) Will be used to increase parents' knowledge of expected early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reforms to improve student achievement and increase graduation rates; and the use of data to inform instruction and school reform activities;

(iii) Will be used to increase youth's knowledge of their rights and responsibilities, and increase their self-advocacy skills;

(iv) Will be used to inform a variety of families, youth, and professionals;

(v) Are available in a variety of formats;

(vi) Can be used in various methods to deliver TA (in-person, remote, and Web-based, among others);

(vii) Use best practices for informing and training families and youth;

(viii) Address the needs identified through the needs assessment in paragraph (b)(1) of this focus area;

(ix) Address gaps in the resources available in the repository in paragraph (b)(3) of this focus area;

(x) Address emerging educational and policy initiatives;

(xi) Are developed in consultation with the Regional PTACs, Native American PTAC, and parent centers; and

(xii) Use content-specific knowledge and expertise within parent centers in the development, review, and dissemination of the resources;

(5) Provide universal TA, as appropriate, to parent centers on evidence-based education practices that improve early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reform efforts to improve student achievement and increase graduation rates; the use of data to inform instruction and advance school reform efforts; and best practices in nonprofit management, outreach, family-centered services, self-advocacy skill building, and the use of technology in service provision and nonprofit management that—

(i) Targets a variety of audiences (parent center directors, staff, new personnel, and members of the boards of directors, among others);

(ii) Increases parent centers' knowledge of expected early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; and school reforms to improve student achievement and increase graduation rates;

(iii) Includes a variety of formats (meetings, newsletters, communities of practice, wikis, among others);

(iv) Uses various methods to deliver TA (in-person, remote, and Web-based, among others);

(v) Uses best practices for training and providing TA to adult learners;

(vi) Uses technology to increase its efficiency and effectiveness;

(vii) Addresses the needs identified through the needs assessment in paragraph (b)(1) of this focus area;

(viii) Addresses emerging educational and policy initiatives;

(ix) Is developed in consultation with the Regional PTACs, Native American PTAC, and parent centers; and

(x) Leverages content-specific knowledge and expertise within parent centers;

(6) Assist parent centers in the collection of annual performance data required under section 671(b)(12) of IDEA, in consultation with the OSEP project officer;

(7) Disseminate information about the CPIR, OSEP's Technical Assistance and Dissemination Network, OSEP initiatives, and other Department-funded resources and initiatives in collaboration with the Regional PTACs and Native American PTAC that—

(i) Promotes parent center engagement in these initiatives; and

(ii) Makes use of existing knowledge and expertise across the parent centers, the Regional PTACs, and the Native American PTAC; and

(8) Consult with a group of persons, including representatives from parent centers, State educational agencies, State lead agencies, other OSEP-funded TA projects, project directors of State Professional Development Grants, and researchers, as appropriate, on the activities and outcomes of the CPIR and solicit programmatic support and advice from various participants in the group, as appropriate. The CPIR must identify the members of the group to OSEP within eight weeks after receipt of the award.

(c) Demonstrate, in the narrative section of the application, under ''Quality of the Evaluation Plan'' how—

(1) The applicant will evaluate the effectiveness of the proposed project by undertaking a formative evaluation and a summative evaluation, including a description of how the applicant will measure the outcomes proposed in the logic model (see paragraph (f)(1) of this focus area). The description must include—

(i) Evaluation methodologies, including proposed instruments, data collection methods, and possible analyses; and

(ii) Proposed standards or targets for determining effectiveness;

(2) The applicant will use the results of the formative evaluation to examine the effectiveness of project implementation strategies and the progress toward achieving intended outcomes; and

(3) Formative evaluation activities during the project period will complement and coordinate with a summative evaluation. The formative and summative evaluations will be developed in consultation with the OSEP project officer.

(d) Demonstrate, in the narrative section of the application, under ''Adequacy of Project Resources'' how—

(1) The proposed personnel, consultants, and contractors are highly qualified and experienced in carrying out the proposed activities and in meeting the outcomes identified in the project logic model (see paragraph (f)(1) of this focus area);

(2) The qualifications of the members of the group of persons listed in paragraph (b)(8) of this focus area are relevant to the proposed activities and outcomes;

(3) The applicant will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate; and

(4) The applicant and key partners have adequate resources to carry out proposed project activities.

(e) Demonstrate, in the narrative section of the application, under ''Quality of the Management Plan'' how—

(1) The proposed management plan will ensure that the outcomes identified in the project logic model (see paragraph (f)(1) of this focus area) will be achieved on time and within budget;

(2) The time of key personnel, consultants, and contractors will be sufficiently allocated to the project;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The applicant will ensure that the proposed project benefits from a diversity of perspectives, including parent center staff, TA providers, researchers, and families, among others.

(f) In the narrative under ''Required Project Assurances'' or appendices as directed, the applicant must—

(1) Include in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

(2) Include in Appendix A, a conceptual framework for the project;

(3) Include in Appendix A, person-loading charts and timelines to illustrate the management plan described in the narrative;

(4) Ensure that the budget includes attendance at the following:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period.

(iii) One trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(5) Ensure that the budget includes a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(6) Include in the budget for the second and third years financial support for parent center project directors to travel to Washington, DC, for an annual parent center meeting. The second year budget must include financial support for 73 project directors, and the third year budget must include financial support for 30 project directors. The budget for the fourth and fifth years should not include any financial support for parent center project directors; and

(7) Ensure that the project maintains a Web site, including the repository described in paragraph (b)(3) of this focus area, that meets government or industry-recognized standards for accessibility.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the CPIR for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The CPIR must budget for travel expenses associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the CPIR; and

(c) The quality, relevance, and usefulness of the CPIR's activities and resources and the degree to which they have contributed to improved knowledge among parent centers of evidence-based education practices that lead to expected early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reforms to improve student achievement and increase graduation rates; the use of data to inform instruction and in school reform activities; and the best practices in nonprofit management, outreach, family-centered services, self-advocacy skill building, and the use of technology in service provision and nonprofit management.

Focus Area 2: The requirements of this focus area, the Regional PTACs, are as follows:

(a) Demonstrate, in the narrative section of the application, under ''Significance of the Project'' how the project—

(1) Addresses the needs of parent centers in its region for targeted and intensive TA to increase their capacity to reach and provide services to parents and youth in their areas, effectively manage their centers, support parental engagement in school reform activities, and build youth's self-advocacy skills. To address this requirement the applicant must—

(i) Present appropriate information on the needs of parent centers in the region;

(ii) Demonstrate knowledge of best practices on providing training and information to a variety of audiences, to include parents from diverse backgrounds and youth;

(iii) Demonstrate knowledge of current evidence-based education practices and policy initiatives in early childhood, general and special education, transition services, and postsecondary options;

(iv) Demonstrate knowledge of current best practices in outreach, family-centered services, self-advocacy skill building, nonprofit management, and the use of technology in service provision and nonprofit management; and

(v) Demonstrate knowledge of current OSEP TA&D projects, including the RRC program, and other Department-funded projects, among others; and

(2) Will increase the capacity of the parent centers in the region to reach and provide services to parents and youth in their areas.

(b) Demonstrate, in the narrative section of the application, under ''Quality of the Project Services'' how the project will—

(1) Conduct a regional assessment of the needs of parent centers for ongoing targeted and intensive TA to increase their capacity to—

(i) Reach and provide services to parents and youth in their area, including appropriate referrals to other services that support families and youth;

(ii) Effectively manage their centers; and

(iii) Support parent engagement in school reform activities, including the use of data to enhance school reform efforts.

Note: The methods and tools that will be used to conduct the regional needs assessment will be finalized in consultation with the CPIR, other Regional PTACs, the Native American PTAC, and the OSEP project officer in order to assure coordination and avoid duplication;

(2) Use a conceptual framework and project logic model (see paragraph (f)(1) of this focus area) to guide the development of project plans and activities;

(3) Provide ongoing targeted TA to parent centers in the region that—

(i) Targets a variety of audiences (parent center directors, staff, new personnel, and members of the boards of directors, among others);

(ii) Uses various methods to deliver TA (e.g., in-person, remote, and Web-based) and includes at least one in-person, on-site visit to each parent center in the region during the course of the five-year project period;

(iii) Increases parent centers' capacity to provide information and training on expected early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reforms to improve student achievement and increase graduation rates; and the use of data to inform instruction and enhance school reform efforts;

(iv) Increases parent centers' capacity to train youth on their rights and responsibilities and build their self-advocacy skills;

(v) Uses best practices for training and providing TA to adult learners;

(vi) Uses technology to increase its efficiency and effectiveness;

(vii) Addresses the needs identified through the regional needs assessment in paragraph (b)(1) of this focus area;

(viii) Responds to emerging educational and policy initiatives;

(ix) Builds on the universal TA provided by the CPIR;

(x) Is developed in consultation with the Native American PTAC and parent centers in the region; and

(xi) Makes use of existing knowledge and expertise within parent centers, the CPIR, and the other Regional PTACs;

(4) Provide intensive TA to parent centers that request it or are identified by OSEP as needing it. This intensive TA includes—

(i) Methods for identifying and accessing needed resources in other parent centers, the CPIR, the Regional PTACs, OSEP TA&D centers, other Department-funded resources, and national and State nonprofit and technology TA centers, among others;

(ii) Methods for clearly communicating with the parent centers receiving intensive TA and their OSEP project officers, as appropriate;

(iii) In-person, on-site visits with the parent centers in need of intensive TA, as appropriate; and

(iv) Methods for following up with parent centers and providing ongoing support as needed; and

(5) Disseminate information about the Regional PTACs, OSEP's Technical Assistance and Dissemination Network, OSEP initiatives, and other Department-funded resources and initiatives in collaboration with the CPIR and the Native American PTAC.

(c) Demonstrate, in the narrative section of the application, under ''Quality of the Evaluation Plan'' how—

(1) The applicant will evaluate the effectiveness of the proposed project by undertaking a formative evaluation and a summative evaluation, including a description of how the applicant will measure the outcomes proposed in the logic model (see paragraph (f)(2) of this focus area). The description must include—

(i) Evaluation methodologies, including proposed instruments, data collection methods, and possible analyses; and

(ii) Proposed standards or targets for determining effectiveness;

(2) The applicant will use the results of the formative evaluation to examine the effectiveness of project implementation strategies and the progress toward achieving intended outcomes; and

(3) Formative evaluation activities during the project period will complement and coordinate with a summative evaluation. The formative evaluation and a final, common summative evaluation for all the Regional PTACs will be developed in consultation with the Regional PTACs and OSEP project officers for the Regional PTACs.

(d) Demonstrate, in the narrative section of the application, under ''Adequacy of Project Resources'' how—

(1) The proposed personnel, consultants, and contractors are highly qualified and experienced in carrying out the proposed activities and meeting the outcomes identified in the project logic model (see paragraph (f)(2) of this focus area);

(2) The applicant will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate; and

(3) The applicant and key partners have adequate resources to carry out proposed project activities.

(e) Demonstrate, in the narrative section of the application, under ''Quality of the Management Plan'' how—

(1) The proposed management plan will ensure that the outcomes identified in the project logic model (see paragraph (f)(2) of this focus area) will be achieved on time and within budget;

(2) The time of key personnel, consultants, and contractors will be sufficiently allocated to the project;

(3) The proposed management plan will ensure that the services provided are of high quality; and

(4) The applicant will ensure that the proposed project benefits from a diversity of perspectives, including parent center staff, TA providers, researchers, and families, among others.

(f) In the narrative under ''Required Project Assurances'' or appendices as directed, the applicant must—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

(2) Include in Appendix A, a conceptual framework for the proposed project;

(3) Include in Appendix A, person-loading charts and timelines to illustrate the management plan described in the narrative;

(4) Ensure that the budget includes attendance at the following:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period;

(iii) One trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(5) Ensure that the budget includes a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Ensure that the project maintains a Web site that meets government or industry-recognized standards for accessibility.

Focus Area 3: The requirements of this focus area, the Native American PTAC, are as follows:

(a) Demonstrate, in the narrative section of the application, under ''Significance of the Project'' how the project—

(1) Addresses parent centers' needs for knowledge of how to provide effective, culturally responsive services that meet the needs of Native American parents of children with disabilities and Native American youth with disabilities for universal, targeted, and intensive TA to increase their capacity to support those families and youth. To address this requirement the applicant must—

(i) Present information on the needs of Native American families of children with disabilities and Native American youth with disabilities, the different systems that provide services to these families and youth, and the best culturally responsive practices for reaching and supporting Native American parents and youth;

(ii) Demonstrate knowledge of best practices on providing training and

information to a variety of audiences, particularly Native American parents and youth;

(iii) Demonstrate knowledge of current evidence-based education practices and policy initiatives for Native American children and youth in early childhood, early learning, general and special education, transition services, and postsecondary programs; and

(iv) Demonstrate knowledge of current OSEP TA&D projects, including the RRC program, among others; other Department-funded resources; and other Federal, State, and local resources that serve Native American families and youth; and

(2) Will result in an increased capacity of the parent centers to effectively support and provide services to Native American parents and youth.

(b) Demonstrate, in the narrative section of the application, under ''Quality of the Project Services'' how the project will—

(1) Conduct a national assessment of the needs of parent centers for—

(i) Knowledge of the needs of Native American families of children with disabilities and Native American youth with disabilities; the different systems that provide services to those families and youth; and the best culturally responsive practices for reaching and supporting Native American families of children with disabilities and Native American youth; and

(ii) Resources and services to increase parent centers' capacity to reach and provide services to Native American families and youth, including making appropriate referrals to other services that support families and youth.

Note: The methods and tools that will be used to conduct the needs assessment will be finalized in consultation with the CPIR, the Regional PTACs, and the OSEP project officer in order to assure coordination and avoid duplication;

(2) Use a conceptual framework and project logic model (see paragraph (f)(2) of this focus area) to guide the development of project plans and activities; and

(3) Provide universal and targeted TA, as appropriate, to parent centers on culturally responsive practices in reaching and supporting Native American families of children with disabilities and Native American youth with disabilities and supporting the participation of Native American parents of children and youth with disabilities in school reform activities, that—

(i) Includes training for a variety of audiences (parent center directors, staff, and members of the boards of directors, among others);

(ii) Includes a variety of formats (newsletters, communities of practice, wikis, among others);

(iii) Increases parent centers' capacity to provide information and training to Native American families on evidence-based education practices that lead to improved early learning, school-aged, and postsecondary outcomes; college- and career-ready standards and assessments; school reform efforts to improve student achievement and increase graduation rates; and the use of data to inform instruction and enhance school reform efforts;

(iv) Increases parent centers' capacity to train Native American youth on their rights and responsibilities and to build their self-advocacy skills;

(v) Uses various methods to deliver TA (in-person, remote, and Web-based, among others);

(vi) Uses best practices for training and providing TA to adult learners;

(vii) Uses technology to increase its efficiency and effectiveness;

(viii) Addresses the needs identified through the needs assessment in paragraph (b)(1) of this focus area;

(ix) Responds to emerging educational and policy initiatives that affect Native American families of children with disabilities and Native American youth with disabilities; and

(x) Makes use of existing knowledge and expertise within parent centers, the CPIR, and the Regional PTACs;

(4) Create new training and information materials for parent centers to use with staff members and Native American families and youth that are responsive to the changing needs of parent centers;

(5) Provide intensive TA to parent centers that request it. The intensive TA may include—

(i) Methods for identifying and accessing needed resources in other parent centers, the CPIR, the Regional PTACs, OSEP TA&D centers, other Department-funded resources, and national and State Native American centers, among others;

(ii) Methods for acting as a ''cultural broker'' between parent centers and tribal entities, as appropriate;

(iii) In-person, on-site visits with the parent centers in need of intensive TA, as appropriate; and

(iv) Methods for following up with parent centers and providing ongoing support as needed;

(6) Disseminate information to Native American families about the work of the parent centers, OSEP's Technical Assistance and Dissemination Network, OSEP initiatives, and other Department-funded resources and initiatives in collaboration with the CPIR and the Regional PTACs; and

(7) Refer Native American families who contact the Native American PTAC to the appropriate parent centers in a manner that assures that the families' needs will be served; and, as appropriate, incorporates TA to the parent centers to build their capacity to support these families and youth.

(c) Demonstrate, in the narrative section of the application, under ''Quality of the Evaluation Plan'' how—

(1) The applicant will evaluate the effectiveness of the proposed project by undertaking a formative evaluation and a summative evaluation, including a description of how the applicant will measure the outcomes proposed in the logic model (see paragraph (f)(1) of this focus area). The description must include—

(i) Evaluation methodologies, including proposed instruments, data collection methods, and possible analyses; and

(ii) Proposed standards or targets for determining effectiveness;

(2) The applicant will use the results of the formative evaluation to examine the effectiveness of project implementation strategies and the progress toward achieving intended outcomes; and

(3) Formative evaluation activities during the project period will complement and coordinate with a summative evaluation. The formative and summative evaluation will be developed in consultation with the OSEP project officer.

(d) Demonstrate, in the narrative section of the application, under ''Adequacy of Project Resources'' how—

(1) The proposed personnel, consultants, and contractors are highly qualified and experienced in carrying out the proposed activities and meeting the outcomes identified in the project logic model (see paragraph (f)(1) of this focus area);

(2) The applicant will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate; and

(3) The applicant and key partners have adequate resources to carry out proposed project activities.

(e) Demonstrate, in the narrative section of the application, under ''Quality of the Management Plan'' how—

(1) The proposed management plan will ensure that the outcomes identified

in the project logic model (see paragraph (f)(2) of this focus area) will be achieved on time and within budget;

(2) The time of key personnel, consultants, and contractors will be sufficiently allocated to the project;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The applicant will ensure that the proposed project benefits from a diversity of perspectives, including parent center staff, TA providers, researchers, and families, among others.

(f) In the narrative under ''Required Project Assurances'' or appendices as directed, the applicant must—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

(2) Include in Appendix A, a visual representation of the conceptual framework for the project;

(3) Include in Appendix A, person-loading charts and timelines to illustrate the management plan described in the narrative;

(4) Ensure that the budget includes attendance at the following:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period.

(iii) One trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(5) Ensure that the budget includes a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Ensure that the project maintains a Web site that meets government or industry-recognized standards for accessibility.

Competitive Preference Priorities:

Within this absolute priority, we give competitive preference to applications that address the following priorities.

Under 34 CFR 75.105(c)(2)(i), we will award additional points to an application that meets one or more of these priorities, as follows. We will award an additional 5 points to an applicant under Focus Areas 2 and 3 of the absolute priority that meets Competitive Preference Priority 1. We will award an additional 5 points to an applicant under Focus Area 2 of the absolute priority that meets Competitive Preference Priority 2. We will award an additional 5 points to an applicant under Focus Area 3 of the absolute priority that meets Competitive Preference Priority 3.

These priorities are:

Competitive Preference Priority 1—Applicants under Focus Areas 2 and 3 that are parent organizations.

Section 671(a)(2) of IDEA defines a ''parent organization'' as a private nonprofit organization (other than an institution of higher education) that—

(A) Has a board of directors—

(i) The majority of whom are parents of children with disabilities ages birth through 26;

(ii) That includes—

(I) Individuals working in the fields of special education, related services, and early intervention;

(II) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(B) Has as its mission serving families of children with disabilities who—

(i) Are ages birth through 26; and

(ii) Have the full range of disabilities described in section 602(3) of IDEA.

Competitive Preference Priority 2—Applicants under Focus Area 2 that are located in the region they propose to serve.

Competitive Preference Priority 3—Applicants under Focus Area 3 that are Native American organizations.

A Native American organization is a nonprofit organization with Native Americans constituting a majority of the members of the board of directors.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1471, 1472, 1473, and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,866,402 for the first year; $2,705,000 in the second year; $2,645,000 for the third year; and $2,600,000 for the subsequent years.

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: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

TRAINING AND INFORMATION FOR PARENTS OF CHILDREN WITH DISABILITIES PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 2013

CFDA No. and name	Estimated available funds	Estimated average size of awards	Maximum award (per year)	Estimated number of awards	Project period	Contact person
84.328R Technical Assistance for Parent Centers.	.....	.....	.....	.....	.....	Carmen Sanchez, (202) 245–6595 Rm 4057.
Focus Area 1: CPIR	Year 1: $400,000 .. Year 2: $605,000 .. Year 3: $545,000 .. Year 4: $500,000 .. Year 5: $500,000 ..	Year 1: $400,000 .. Year 2: $605,000 .. Year 3: $545,000 .. Year 4: $500,000 .. Year 5: $500,000 ..	Year 1: $400,000* Year 2: $605,000.*. Year 3: $545,000.*. Year 4: $500,000.*. Year 5: $500,000.*.	1	Up to 60 mos.	
Focus Area 2: Regional PTAC.	Year 1: $1,256,916 Years 2–5: $1,800,000.	Year 1: $209,486 .. Years 2–5: $300,000.	Year 1: $209,486.* Years 2–5: $300,000.*.	6	Up to 60 mos.	
Focus Area 3: Native American PTAC.	Year 1: $209,486 .. Years 2–5: $300,000.	Year 1: $209,486 .. Years 2–5: $300,000.	Year 1: $209,486.* Years 2–5: $300,000.*.	1	Up to 60 mos.	

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofit private organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

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 competition as follows: CFDA number 84.328R.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. 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 cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 3, 2013.

Deadline for Transmittal of Applications: July 18, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 16, 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 program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Technical Assistance for Parent Centers, CFDA number 84.328R, 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 Technical Assistance for Parent Centers, CFDA number 84.328R, at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.328, not 84.328R).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not

review that material. Additional, detailed information on how to attach files is in the application instructions.

- 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: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, Potomac Center Plaza (PCP), Washington, DC 20202–2600. FAX: (202) 245–7617.

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 84.328R) 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 84.328R)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. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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 of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Parent Training and Information Centers program. For purposes of this priority, the Center will use these measures, which focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., room 4057, PCP, Washington, DC 20202–2600. Telephone: (202) 245–6595.

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

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at 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: May 29, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–13094 Filed 5–31–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Re-Opening of the Public Comment Period for the Draft Uranium Leasing Program Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Re-opening of the public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is re-opening the public comment period for the Draft *Uranium Leasing Program Programmatic Environmental Impact Statement* (Draft ULP PEIS, DOE/EIS–0472D), made available for public comment on March 15, 2013. The public comment period will now end on July 1, 2013.

DATES: The public comment period, which was scheduled to end on May 31, 2013, is being re-opened and will close on July 1, 2013.

ADDRESSES: The Draft ULP PEIS is available for review on the ULP PEIS Web site at *http://ulpeis.anl.gov/* and the DOE NEPA Web site at *http://www.energy.gov/nepa*. Please direct written comments on the Draft ULP PEIS to Mr. Raymond Plieness, ULP PEIS Document Manager, Office of Legacy Management, U.S. Department of Energy, 11025 Dover Street, Suite 1000, Westminster, CO 80021.

Comments may also be submitted via email to *ulpeis@anl.gov* or via the Internet at *http://ulpeis.anl.gov/*.

FOR FURTHER INFORMATION CONTACT: For general information about the NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–4600, leave a message at 1–800–472–2756, or send an email to Ask *NEPA@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE made the Draft ULP PEIS available for public comment on March 15, 2013 (78 FR 16500). The public comment period for the Draft ULP PEIS was to end on May 16, 2013, and an extension to May 31, 2013, was announced on April 23, 2013 (78 FR 23926). With this notice, DOE re-opens the public comment period, which will now close on July 1, 2013, in response to a public request for additional review time.

DOE will give equal weight to written, email, and oral comments. Questions regarding the ULP PEIS process, requests to be placed on the ULP PEIS mailing list, and requests for copies of the document should be directed to Mr. Plieness at the address provided in the **ADDRESSES** section. Comments received after the end of the comment period will be considered to the extent practicable.

Issued in Washington, DC, on May 29, 2013.

David W. Geiser,

Director, DOE Office of Legacy Management.

[FR Doc. 2013–13055 Filed 5–31–13; 8:45 am]

BILLING CODE 6450–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0030]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087980XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087980XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to Australia.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger service from Australia to other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company

Obligor: Qantas Airways Limited

Description of Items Being Exported

Boeing 787 aircraft

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before June 28, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2013–0030 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0030 on any attached document.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–13049 Filed 5–31–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0030]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087980XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for

a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087980XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to Australia.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger service from Australia to other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company

Obligor: Qantas Airways Limited

Description of Items Being Exported

Boeing 787 aircraft

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before June 28, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2013–0030 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0030 on any attached document.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–13044 Filed 5–31–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 13–618]

Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications and Reminder of the Spectrum Act's Preservation Mandate

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate limitation on the filing and processing of full power and class A television station modification applications and also reminds television broadcast stations of the Spectrum Act's Preservation Mandate. *See* Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, Title VI, 125 Stat. 156 (2012) (''Spectrum Act''). This action will facilitate Commission analysis of repacking methodologies and assure that the objectives of the broadcast television incentive auction, as mandated by the Spectrum Act, are not frustrated. *See* Spectrum Act at Section 6403(b)(2).

DATES: This filing and processing limitation become effective on April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission, *barbara.kreisman@fcc.gov,* (202) 418–1600.

SUPPLEMENTARY INFORMATION:

I. Limitations on the Filing and Processing of Modification Applications: Beginning immediately, and until further notice, the Media Bureau will not accept for filing modification applications (or amendments to pending modification applications) by full power and Class A television broadcast licensees and permittees for changes to existing television service areas that would increase a full power station's noise-limited contour or a Class A station's protected contour in one or more directions beyond the area resulting from the station's present parameters as represented in its authorizations (license and/or construction permit).[1] Similarly, the Media Bureau will not accept Class A displacement applications that would increase the station's protected contour. However, consistent with the Commission's proposal in the *Notice of Proposed Rulemaking,* 77 FR 69933 (Nov. 21, 2012),[2] Class A minor change applications to implement the digital transition (flash cut and digital companion channel) may continue to be filed and will be processed subject to the current limitations in Sections 73.3572(a)(2) and 74.787(a)(2) of the Commission's rules.

The Bureau will consider, on a case-by-case basis, requests for waiver of the filing limitation imposed by this public notice when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, such a request will be granted only on a showing of good cause and when grant of the waiver will serve the public interest.

With respect to pending full power and Class A modification applications, we will process those applications that do not increase the full power station's noise-limited contour or the Class A station's protected contour in one or more directions beyond the area resulting from the station's present parameters as represented in its authorizations (license and/or construction permit). Applicants at variance with this limitation may amend their applications within 60 days of the Public Notice to comply with this limitation or request a waiver. Pending applications that are not amended consistent with this public notice will be processed after the Commission's release of a Report and Order in the Incentive Auction rulemaking

[1] *See* 47 CFR 73.622(e)(1) (defining ''service area'' of a full power TV broadcast station). As to Class A stations, *protected contour* is consistent with the proposed interpretation of the statutory term ''coverage area'' in the *NPRM. See Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions,* Docket No. 12–268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12390, para. 99 (2012) (''*NPRM*'').

[2] *Id.* at 12397, para. 115 (''We do propose to protect in the repacking process certain digital Class A facilities that were not licensed as of February 22, 2012.'').

proceeding, subject to the rules and policies adopted therein.[3]

II. Spectrum Act Preservation Mandate: We take this opportunity to remind stations that, as provided in the Spectrum Act and the *NPRM,* the extent to which a facility that is not covered by Section 6403(b)(2) (a ''non-covered facility'') will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.[4]

For stations with non-covered authorized facilities, we take this opportunity to remind them, before additional investments are made in these non-covered facilities, that the extent to which the non-covered facility will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.[5]

Accordingly, the Media Bureau will process applications from permittees modifying their non-covered facilities to revert to the service area resulting from the station's licensed facilities as of February 22, 2012. If a permittee of a non-covered facility fails to file for this modification, the extent of preservation of the non-covered facility will be determined by the Commission in the Incentive Auction rulemaking proceeding.

This action is taken by the Chief, Media Bureau pursuant to authority delegated by 47 CFR 0.283 of the Commission's rules.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2013–12984 Filed 5–31–13; 8:45 am]

BILLING CODE 6712–01–P

[3] The decision to impose these limitations on the filing and processing of modification applications is procedural in nature, and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A), (d); *see also Neighborhood TV Co.* v. *FCC,* 742 F.2d 629, 637–38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc.* v. *United States,* 438 F.2d 948, 952–53 (6th Cir. 1971); *Kessler* v. *FCC,* 326 F.2d 673, 680–82 (D.C. Cir. 1963). Moreover, we find that there is good cause for not delaying the effect of these procedures until 30 days after publication in the **Federal Register**. Such a delay would be impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of these procedures. *See* 5 U.S.C. 553(b)(B), (d)(3).

[4] *See* Spectrum Act at Sections 6403(b)(2), 6403(i)(1); *NPRM, 27* FCC Rcd at 12390, 12397 paras. 98, 113.

[5] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Thursday, June 13, 2013 in the Commission Meeting Room, from 1 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

DATES: June 13, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The FCC Technological Advisory Council will discuss progress on work areas announced at its initial meeting of the year on March 11, 2013. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary.

[FR Doc. 2013–12986 Filed 5–31–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Charles R. Soward,* Rosiclare, Illinois and Kimberly A. Cotton, Henderson, Kentucky; to acquire voting shares of Hardin County Bancorp, Rosiclare, Illinois, and thereby indirectly acquire Area Bank, Rosiclare, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Devon Joan Goetz,* Mandan, North Dakota; to acquire voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly gain control of Security First Bank of North Dakota, New Salem, North Dakota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Joshua C. Rowland,* Kansas City, Missouri; to acquire as a member of the Rowland family control group voting shares of Lead Financial Group, Inc., and thereby acquire Lead Bank, both in Garden City, Missouri.

Board of Governors of the Federal Reserve System, May 28, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–12958 Filed 5–31–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 18, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Leland E. Boren, Upland, Indiana; as an individual and the group consisting of Leland E. Boren; Leland E. Boren, IRA; Leland E. Boren as Co-Representative of the LaRita R. Boren Estate; the LaRita R. Boren CRT III, the Andrew J. Bowser Trust, and the Samantha L. Bowser Trust, and Leland E. Boren as trustee of the Lael E. Boren Trust with Patsy L. Smith, as trustee;* to acquire voting shares of Independent Alliance Banks, Inc., and thereby indirectly acquire voting shares of IAB Financial Bank, both in Fort Wayne, Indiana.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Sarah Marie Getzlaff,* Bismarck, North Dakota; as a member of the Goetz Family Group, to retain voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly retain voting shares of Security First Bank of North Dakota, New Salem, North Dakota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Paul M. Freeman, as custodian for Ann E. Freeman, both of Texhoma, Oklahoma, the John L. Freeman 2012 Trust, Guymon, Oklahoma, and Jacqueline Freeman,* Texhoma, Oklahoma, trustee; all as members of the Freeman family control group, to retain voting shares of Texhoma Bancshares, Inc., and thereby indirectly retain voting shares of Anchor D Bank, both in Texhoma, Oklahoma.

Board of Governors of the Federal Reserve System, May 29, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–13005 Filed 5–31–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank 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 applications will also 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 BHC Act (12 U.S.C. 1842(c)). 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 4 of the BHC Act (12 U.S.C. 1843). 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 June 28, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Virginia National Bankshares Corporation,* Charlottesville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Virginia National Bank, Charlottesville, Virginia.

Board of Governors of the Federal Reserve System, May 29, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–13003 Filed 5–31–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 2013.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. FNB Corporation, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of PVF Capital Corp., Solon, Ohio, and indirectly acquire Park View Federal Savings Bank, Solon, Ohio, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4). Comments regarding this application must be received by June 28, 2013.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Omega Capital Corp.,* Lakewood, Colorado; to directly engage *de novo* in

lending activities, pursuant to section 225.28(b)(1).

Board of Governors of the Federal Reserve System, May 29, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–13004 Filed 5–31–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13TY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of Community-Based Supports for Healthy Eating and Active Living—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

According to the Dietary Guidelines for Americans and Physical Activity Guidelines for Americans, both published by the federal government, the consumption of a healthful diet and regular physical activity are important behaviors for the prevention of obesity and other chronic diseases.

Behavior change is made at the level of the individual. However, models such as the socioecological model suggest that health and behavior are determined by many factors or ''levels of influence'' that extend beyond the individual. There is growing consensus among experts that one of these factors is the environment that surrounds the individual. Characteristics of the environment can support or discourage the choices individuals make. Within communities, the establishment of policies by local governments is an initial step to changing the environments that support healthier behaviors for diets and physical activity.

Currently, little is known about the environmental and policy supports for healthful diets and regular physical activity within a community and how these supports are changing across time. As a result, CDC plans to conduct a survey to address this gap in knowledge. The survey will be administered to a nationally representative sample of 4,484 communities. Respondents will be city planners/managers in these communities. Information will be collected about the following topics: community-wide planning efforts for healthy eating and active living, the built environment and policies that support physical activity, and policies and practices that support access to healthy food and healthy eating. Data will be collected using a secure, web-based survey data collection system, with telephone and mail follow-up for non-response.

The proposed survey content and data collection procedures incorporate lessons learned during an initial pilot study (OMB No. 0920–0934, ''Pilot Study of Community-Based Surveillance and Supports for Healthy Eating/Active Living'', expiration 5–31–2013).

Assessment of policy and environmental supports for healthful eating and physical activity will serve multiple uses. First, the collected data will describe the characteristics of communities that have specific policy and practice supports favorable for healthy diets and regular physical activity. Second, the collected data will help identify the extent to which communities implement strategies consistent with current national recommendations. Third, local agencies may use the data collected to consider how they compare nationally or with other municipalities of a similar geography, population size, or urbanicity. Fourth, this information can help guide communities in their local decision-making efforts on feasible policy and environmental interventions or solutions for healthy behaviors or choices. Finally, information collected through this survey may serve as a baseline to track community-level policies and practices across time.

Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of esponses per respondent	Average burden per response (in hr)	Total Burden (in hrs)
City/Town Planner or Manager.	Survey of Community-Based Policy and Environmental Supports for Healthy Eating and Active Living.	4,484	1	30/60	2,242
City/Town Planner or Manager.	Telephone Non-response Follow-up Contact Script.	4,484	5	5/60	1,868
Total	.....	.....	.....	.....	4,110

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. 2013–13039 Filed 5–31–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–13KZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Salt Sources Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Stroke and heart disease are directly related to high blood pressure, a condition that affects about 67 million Americans (31 percent of U.S. adults). Sodium intake directly and progressively increases blood pressure and subsequently increases the risk of heart disease and stroke. It has been estimated that an average reduction of as little as 400 mg of sodium daily, or about 11% of average U.S. sodium intake, would prevent more than 28,000 deaths and save 7 billion health care dollars annually. The U.S. Department of Health and Human Services (HHS) has designated reduction in sodium intake as one of CDC's Winnable Battles, as a component of the Million Hearts™ initiative, and as a Healthy People 2020 objective.

There is a critical need for current, accurate information about the sources of sodium intake among diverse groups of adults living in the United States. CDC plans to conduct a new Salt Sources Study to obtain information about the amount of sodium consumed from various sources (including sodium from processed and restaurant foods, sodium inherent in foods, and salt added at the table and during cooking) and to examine variability across population subgroups. Data collection will include an observational component as well as a sub-study designed to refine the accuracy of estimates of total sodium intake and discretionary sodium intake.

Information will be collected in three distinct geographic regions: (1) Minneapolis/St. Paul, Minnesota, (2) Birmingham, Alabama, and (3) Palo Alto, California. Over a two-year period, a study center in each location will recruit 150 participants (total N=450) with the aim of selecting an equal number of adults ages 18–74 years by approximately 10-year age groups in each sex-race group, including whites, blacks, Hispanics, and Asians. A sub-study will be conducted among a subgroup of 150 of these participants (50 per site). One study center will serve as a study coordinating center and will transmit de-identified information to CDC through a secure Web site. CDC is authorized to conduct this information collection under section 301 of the Public Health Service Act (42 U.S.C. 241).

For the observational study component, CDC estimates that each study site will enroll 75 participants per year. After completing a screening process, each participant will complete a personal questionnaire, a tap water questionnaire, four 24-hour dietary recalls, and four qualitative food records. In addition, height and weight information on each participant will be collected, and each participant will collect duplicate portions of their cooking/table salt. Fifteen participants at each site will also provide water samples that will be analyzed to produce estimates of the amount of sodium in private sources of tap water.

The Salt Sources Study will include a sub-study to help determine the accuracy of estimates of total sodium intake and discretionary salt intake. CDC will ask about 25 participants at each site to use a Study Salt for 11 days instead of their own household salt, provide additional information based on four 24-hour urine collections, four follow-up urine collection questionnaires, and three follow-up questionnaires on Study Salt use. The Study Salt contains a very small amount of lithium, a metal found in trace amounts in all plants and animals.

Results from the Salt Sources Study will be used to inform public health strategies to reduce sodium intake, determine if substantial variability in sources of sodium intake exists by socio-demographic subgroups, and better inform estimates of salt added at the table used in Healthy People 2020 objectives related to sodium reduction.

OMB approval is requested for two years. Participation in the Salt Sources Study is voluntary and there are no costs to participants other than their time. The total estimated annualized burden hours are 1,372.

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 18–74 years	Telephone Recruitment and Screening	225	1	10/60
	Participant Questionnaire	225	1	10/60
	Discretionary Salt Use Questions from NHANES 2009.	225	1	5/60
	Height and Weight	225	1	10/60
	Study Orientation and Scheduling	225	1	20/60
	Tap Water Questionnaire	225	1	5/60
	24-Hour Dietary Recall	225	4	30/60
	Food Record	225	4	15/60
	Duplicate Salt Sample Collection	225	4	10/60
	Water Collection Form and Instructions	15	1	5/60
	24-hour Urine Collection	75	4	50/60
	Follow-up Urine Collection Questionnaire	75	4	10/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
	Study Salt Supplement Questionnaire	75	3	5/60

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. 2013–13038 Filed 5–31–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–13BF]

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

Spectrum of Flavoring Chemical-Related Lung Disease—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves a questionnaire, along with clinical testing, to investigate and characterize the nature of lung disease occurring in popcorn and flavoring workers. Since publication of the 60-day **Federal Register** Notice, the annual burden estimate has been revised. We added the inclusion of job and medication forms to be completed by the participant prior to the testing session. We also included the time needed to review the informed consent. The overall burden hours is now estimated to be 115 hours.

The purpose of this study is to investigate the spectrum of lung disease occurring in flavoring and microwave popcorn workers. A secondary aim is to study the natural history of lung disease. For this study, we plan on interviewing and conducting clinical testing on participants from a previously investigated flavoring plant and microwave popcorn plant.

For this study, we will recruit participants from two study populations: Approximately 112 workers from a flavorings plant for whom we have spirometry data and 132 workers that had abnormal spirometry on any test from a previous NIOSH health hazard evaluation at a microwave popcorn plant. Thirty additional workers from the microwave popcorn plant who had normal spirometry on their last test also will be chosen at random.

NIOSH anticipates that information collection will begin in the 2013 fiscal year for the microwave popcorn workers and for the flavorings workers in fiscal year 2014. Prior to the testing, participants will be mailed a copy of the informed consent to review and asked to complete a job history form and current medication form. This will take no more than 25 minutes (total) to review and complete. On the day of testing, a NIOSH staff member will review the consent form with the participant, which will take about 5 minutes. Participants will then be given a NIOSH-administered questionnaire which will take approximately 20 minutes to complete. All study results will be stored at NIOSH.

Participation in all components of the study is completely voluntary. There are no costs to the respondents other than their time. The total estimated annual burden hours are 115.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Popcorn workers	Informed consent	81	1	15/60
	Medication form	81	1	5/60
	Job history form	81	1	10/60
	Questionnaire	81	1	20/60
Flavoring workers	Informed consent	56	1	15/60
	Medication form	56	1	5/60
	Job history form	56	1	10/60
	Questionnaire	56	1	20/60

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. 2013–12978 Filed 5–31–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2013–0007; NIOSH–233]

NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2014: Proposed Additions and Deletions to the NIOSH Hazardous Drug List

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Draft Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft document for public comment entitled ''NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2014: Proposed Additions and Deletions to the NIOSH Hazardous Drug List.'' The document and instructions for submitting comments can be found at *http://www.regulations.gov.*

This guidance document does not have the force and effect of law.

Public Comment Period: Comments must be received by August 2, 2013.

ADDRESSES: You may submit comments, identified by CDC–2013–0007 and Docket Number NIOSH–233, by either of the two following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Instructions: All information received in response to this notice must include the agency name and the docket number (CDC–2003–0007; NIOSH–233). All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to CDC–2013–0007 and Docket Number NIOSH–233.

SUPPLEMENTARY INFORMATION:

Background: The NIOSH Alert: Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings was published in September 2004 (*http://www.cdc.gov/niosh/docs/2004-165/*). This Alert contained Appendix A which was a list of drugs that were deemed to be hazardous and may require special handling. This list of hazardous drugs was updated in 2010 and 2012 and covered all new approved drugs and drugs with new warning up to December 2009. (*http://www.cdc.gov/niosh/docs/2010-167/; http://www.cdc.gov/niosh/docs/2012-150/*). Between January 2010 and December 2011, 48 new drugs received FDA approval and 276 drugs received special warnings (usually black box warnings) based on reported adverse effects in patients. From this list of 324 drugs, 42 drugs were identified by NIOSH as candidate hazardous drugs. Four of these drugs had safe handling recommendations from the manufacturer and NIOSH is following the recommendations of the manufacturers. Therefore, these four drugs will be listed as hazardous without requiring further review. A panel consisting of peer reviewers and stakeholders was asked to review and comment on the remaining 38 potentially hazardous drugs. In addition, the panel members were asked to comment on the addition of one drug requested by several stakeholders and the removal of one drug from the 2012 Hazardous Drug List. Reviewers were not asked to provide a consensus opinion and NIOSH made the final determination regarding additions and deletions to the 2014 hazardous drug list.

NIOSH reviewed the recommendations of the peer reviewers and stakeholders and determined that 24 drugs in addition to the 4 drugs with manufacturer's warnings, were determined to have one or more characteristics of a hazardous drug and this list of 28 drugs is being published for comment in CDC–2013–0007 and NIOSH Docket Number 233. In addition, 1 drug from the 2012 Hazardous Drug List is being considered for removal. The complete list of these drugs can be found at: *http://www.regulations.gov* as a supporting document.

FOR FURTHER INFORMATION CONTACT: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C26, Cincinnati, Ohio 45226, telephone (513) 533–8132, Email *hazardousdrugs@cdc.gov.*

Dated: May 24, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–13043 Filed 5–31–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Agency Information Collection Activities; Proposed Collection; Comment Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, National Institute of Neurological Disorders and Stroke (NINDS)

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the National Institute of Neurological Disorders (NINDS) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.).

DATES: Comments must be submitted within 30 days after publication in the **Federal Register**.

ADDRESSES: Written comments may be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NIH Desk Officer, by Email to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact: Paul Scott, Ph.D., Director, Office of Science Policy and Planning, NINDS, 31/8A03 Center Drive, Bethesda, MD 20892–2178, or Email your request, including your address to *scottp@ninds.nih.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions,

but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

No comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide NINDS's projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 6.

Respondents: 14,700.

Annual responses: 24,700.

Frequency of Response: Once per request for 5 activities, twice per request for 1 activity.

Average minutes per response: 57.

Burden hours: 5750.

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 Office of Management and Budget control number.

Dated: May 24, 2013.

Story Landis,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2013–13074 Filed 5–31–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting hosted by the NIH Scientific Management Review Board (SMRB). Presentations and discussions will address optimal approach to assessing the value of biomedical research supported by NIH.

The NIH Reform Act of 2006 (Pub.L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the SMRB is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board (SMRB).

Date: June 4, 2013.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: The meeting topics will include: 1) an update from the SMRB's Value of Biomedical Research Working Group, and 2) presentations that explore approaches to studying the value of biomedical research. Time will be allotted on the agenda for public comment. Sign up for public comments will begin approximately at 7:30 a.m. on June 4, 2013, and will be restricted to one sign-in per person. In the event that time does not allow for all those interested to present oral comments, any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Place: National Institutes of Health, Building 1, 3rd Floor, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Contact Person: Juanita Marner, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. *smrb@mail.nih.gov,* (301) 435–1770.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts with the presenters.

The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals From Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13180 Filed 5–31–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive Licenses: Multi-Focal Structured Illumination Microscopy Systems and Methods

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of co-exclusive worldwide licenses to practice the inventions embodied in: E–005–2012/0, /1, /2; U.S. Provisional Patent Application 61/602,139 filed February 23, 2012, U.S. Provisional Patent Application 61/732,460 filed December 3, 2012, and International Patent Application PCT/US2013/27413 filed February 22, 2013 to Andor Technology PLC. having a principle place of business in Belfast, Northern Ireland, and to Vutara, Inc. having a principle place of business in Salt Lake City, Utah.

The United States of America is an assignee to the patent rights of these inventions.

The contemplated co-exclusive license may be in a field of use directed to microscopy devices and systems.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before August 2, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael Shmilovich, Esq., CLP, Senior Licensing and Patent Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@od.nih.gov.* A signed confidential disclosure agreement may be required to receive copies of the patent application assuming it has not already been published under either the publication rules of either the U.S. Patent and Trademark Office or World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The invention pertains to a system and method for digital confocal microscopy that rapidly processes enhanced images. In particular, the invention is a method for digital confocal microscopy that includes a digital mirror device or a swept-field confocal unit to produce a plurality of excitation foci that are imaged to resulting emissions from a sample mounted on a conventional microscope onto an array detector. Computer software detects each confocal spot and provides two times the image resolution of the diffraction limit. In addition, the software implements an optical sectioning technique using a variable ''digital'' pinhole for each confocal spot. Since the variable pinhole is digital (e.g., created by the software), there is no loss in image signal due to additional optical arrangements and tightly closed pinholes used in conventional confocal microscopes.

The prospective co-exclusive licenses will be royalty-bearing and comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 28, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–12967 Filed 5–31–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Administration

Announcement of Requirements and Registration for ''Continuity of Care and Follow-Up App Challenge''

AGENCY: Substance Abuse and Mental Health Administration, HHS.

ACTION: Notice.

SUMMARY: The ''Continuity of Care and Follow-Up App Challenge'' challenges individuals and organizations with the development of an application for a mobile handheld device that will provide continuity of care and follow-up care linkages for a person at risk for suicide who was discharged from an inpatient unit or emergency department. Proposed activities can include but are not limited to: live chatting via the National Suicide Prevention Lifeline Web site, safety planning, SMS [you need to spell this out] functionality, scheduling functionality and appointment reminders, and mapping/transportation functionality showing locations of health care resources. At a minimum, entrants must include safety planning and utilize two resources to provide users with access to services through the crisis centers within the National Suicide Prevention Lifeline and the SAMHSA treatment locator. SAMHSA is not looking for an application that simply connects a user to a crisis line via a single button, as functionality is found in a number of other suicide prevention applications. Innovation is highly encouraged.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358), and Title V, Section 501 of the Public Health Service Act (42 U.S.C. 290aa).

FOR FURTHER INFORMATION CONTACT: James Wright, (240) 276–1854; Richard McKeon, (240) 276–1873.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the U.S. Department of Health and Human Services (DHHS), is announcing an opportunity for individuals and organizations to help solve a critical problem in today's health environment: the need for ongoing mental health follow up treatment after hospitalization or inpatient services for individuals who were suicidal. SAMHSA is seeking the development of a mobile handheld device application that will provide linkages for a person at risk for suicide who was discharged from an inpatient unit or emergency department.

Many people who attempt suicide end up in the emergency room. From 2005–2009 there was a 55 percent increase in emergency department visits for drug related suicide attempts by men age 21–34 and a 49 percent increase by women age 50 and over. While treatment at an emergency department is critical, experience and research have shown that people are still at risk after discharge. Evidence shows that the period following inpatient and emergency department discharge is one of heightened risk for suicide, particularly in the following 30 days. Approximately 10 percent of individuals who died by suicide had been discharged from an emergency department within the previous 60 days and 8.6 percent of people hospitalized for suicidal tendencies are predicted to eventually die by suicide. The problem is the lack of coordinated care

transition, follow-up treatment and continued connection. Evidence shows that efforts to maintain this connection with persons at risk during a high risk period can help prevent suicidal behavior.

This challenge aligns with SAMHSA's mission to reduce the impact of substance use and mental disorders on America's communities. SAMHSA would like this to be a tool that will be utilized to connect health care providers/suicide crisis and support organizations to an at-risk individual who was recently discharged from an inpatient unit or emergency department. Functions of the application may include but are not limited to: live chatting, safety planning, SMS functionality, scheduling functionality and appointment reminders, and mapping functionality showing locations of health care resources. At a minimum, entrants must include safety planning and utilize two resources to provide contact and/or linkages to: the crisis centers within the National Suicide Prevention Lifeline via 1–800–273–TALK (8255) and the SAMHSA treatment locator. The SAMHSA treatment locator is found at *http://findtreatment.samhsa.gov/*.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity participating in the competition (''entrant''):

(1) Shall have registered to participate in the competition under the rules promulgated by the Substance Abuse and Mental Health Administration;

(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 entries or submissions during assigned duty hours;

(6) Shall not be an employee of the Substance Abuse and Mental Health Administration;

(7) Must warrant that the entrant is the sole author and owner of the submission, that the submission is wholly original with this entrant (or is an improved version of an existing app that the entrant has sufficient rights to use—including the substantial improvement of existing open-source apps), and that the submission does not infringe any copyright or other third-party rights of which the entrant is aware;

(8) Must warrant that the app is free of malware;

(9) Must demonstrate compliance with Section 508 of the Rehabilitation Act (29 U.S.C. 794d);

(10) Must not use the HHS logo, symbol, or seal, or any SAMHSA logo, and must not claim endorsement by HHS or SAMHSA;

(11) Must submit the object and source code of the app, as well as a detailed description of the app, including at least (i) instructions on how to install and operate the app, (ii) system requirements for running the app, and (iii) a user's manual or guide. Entrants may submit additional software documentation, if they believe it provides a more complete description of the app, as part of the app submission; and

(12) Must provide SAMHSA with continuous access to the app during the judging period defined above.

An app submission may be disqualified if, in SAMHSA's sole judgment, (i) the app fails to function as expressed in the detailed description, (ii) the detailed description is significantly inaccurate or incomplete, or (iii) malware or other security threats are present. Entrants agree that SAMHSA may conduct testing on the app to determine whether malware or other security threats may be present such that they may damage the equipment or operating environments of the Federal Government or those acting on its behalf.

Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

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.

Registered entrants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

All entrants are required to provide written assurance to comply with the challenge rules and abide by SAMHSA's and the judging panel's decisions upon or before submitting an entry. Applicable Federal law will apply to all disputes arising from this challenge.

DATES:

Submission Period Begins: June 03, 2013.

Submission Period Ends: August 09, 2013.

Judging Period begins: August 12, 2013.

Judging Period ends: August 23, 2013.

Registration Process for Entrants

To register for this challenge entrants should:

- Access the *www.challenge.gov* Web site and search for the ''Continuity of Care and Follow-Up App Challenge''.
  - A registration link for the challenge can be found on the landing page under the challenge description.

Prize

- First Prize: $50,000
- Second Prize: $30,000
- Third Prize: $20,000

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Winner Selection and Judging

Following the deadline for submissions, a panel will judge the entries for accuracy of the information presented and compliance with the challenge requirements described above. The panel of expert judges will choose the top seven entries submitted. The panel will then select the top three winners from these seven entries. There will be one grand prize award of $50,000 and two additional awards of $30,000 and $20,000 given to winning entrants. The expert panel of judges, qualified by training and experience, will evaluate the submissions on the criteria identified below. Judges will be fair and impartial, may not have a personal or financial interest in, or be an employee, officer, director, or agent of, any entity that is a registered participant in the competition, and may not have a familial or financial relationship with an individual who is a registered contestant. The panel will provide expert advice on the merits of each submission to SAMHSA officials responsible for final selections for award. Awardees will be notified on or around September 01, 2013.

Panel:

(1) James Wright, M.S., LCPC, Public Health Advisor, CMHS, Suicide Prevention Branch, SAMHSA.

(2) Ashley Womble, Online Communications Manager, National Suicide Prevention Lifeline.

(3) Maureen Boyle, Team Lead, Health Information Technology, CSAT,

Division of State and Community Assistance, SAMHSA.

The Administrator of SAMHSA will make the final decision based on the top seven entries.

Basis Upon Which Winners Will Be Selected

The judging panel will make selections based upon the following criteria (100 points total):

1. Ease in which a user can navigate different mobile device interfaces (20 points).

2. Ability to initiate and sustain relevant information according to user need and location (20 points).

3. Demonstration of creative and innovative uses of multiple platforms over mobile devices (20 points).

4. Impact on suicide prevention: Each entry will be rated on the strength of its perceived potential to help individuals identified at risk of suicide during emergency room or psychiatric facility discharge link to outpatient treatment or immediate help. Examples of potential strengths will include, but are not limited to: the likelihood of increased usage of application, use of safety planning to maintain safety, and potential for multiple successful connections with mental health, substance abuse and Lifeline crisis center services. (40 points).

Entrants will be expected to demonstrate in real time the functional features of their apps to assist the judging panel's evaluations according to the selection criteria. Demonstrations must be accomplished remotely during this designated time during the judging period.

Additional Information

Intellectual Property Rights

■ All entries are required to be submitted under a Creative Commons license that permits adaptations and commercial uses but does not require share-alike distribution (e.g., CC Attribution 3.0). Details about CreativeCommons licenses can be found at *http://creativecommons.org.*

■ Each entrant hereby irrevocably grants to the Federal Government and those acting on its behalf a nonexclusive, paid-up, irrevocable license to practice or have practiced for or on behalf of the United States any invention throughout the world that, if patented, would cover the app submission or its use.

■ Each entrant hereby acknowledges that SAMHSA has the right to distribute the software (source and object code) under the Creative Commons license used to transfer the software to SAMSHA and under SAMSHA's own trademark or service mark. SAMSHA agrees to include the license notice required by the Creative Commons license with each copy.

Authority: 15 U.S.C. 3719.

Summer King,

Statistician, Substance Abuse and Mental Health Administration.

[FR Doc. 2013–13018 Filed 5–31–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L10100000.PH0000 LXSS0006F0000 241A; 12–08807; MO# 4500051236;–TAS:14X1109]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

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) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will hold two meetings in Nevada in 2013. All meetings are open to the public.

DATES AND TIMES: A June 27 meeting in Elko will be held via video conference and can be viewed at the BLM Ely, Elko or Battle Mountain district offices. A September 12 meeting will be held at the Ely District Office. Meeting times will be published in local and regional media sources at least 14 days before each meeting. All meetings will include a public comment period.

ADDRESSES:

- Elko District Office, 3900 E. Idaho Street, Elko, Nevada.
- Ely District Office, 702 North Industrial Way, HC 33, Ely, Nevada.
- Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada.

FOR FURTHER INFORMATION CONTACT: Lesli Ellis-Wouters, Public Affairs Officer, Elko District Office, 3900 E. Idaho St., Elko, NV 89801. Telephone: (775) 753–0386. Email: *lellis@blm.gov*.

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 Nevada. Topics for discussion at each meeting will include, but are not limited to:

- June 27 (Elko)—mine water management and an overview of oil and gas development on public lands.
- September 12 (Ely)—overview of draft sub-regional Greater Sage-grouse Environment Impact Statement.

Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at any of the three planned meetings.

Final agendas will be posted on-line at the BLM Northeastern Great Basin Resource Advisory Council Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources at least 10 days before each meeting.

Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lesli Ellis-Wouters no later than 10 days prior to each meeting.

Erica Haspiel-Szlosek,

Chief, Office of Communications.

[FR Doc. 2013–13007 Filed 5–31–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–052537, LLCAD05000, L51010000.LVRWB11B4520.FX0000]

Notice of Availability of the Record of Decision for the Alta East Wind Project, Kern County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) to grant a right-of-way (ROW) and amend the California Desert Conservation Area Plan (CDCA Plan) for the Alta East Wind Project (AEWP). The Acting Assistant Secretary for Land and Minerals Management approved the ROD on May 23, 2013, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD/Approved Amendment to the CDCA Plan are available upon request from the Field Manager, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest, CA 93555, and the California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046, or via the Internet at: *http://www.blm.gov/ca/st/en/fo/ridgecrest/alta_east_wind_project.html.*

FOR FURTHER INFORMATION CONTACT: Jeffery Childers; telephone, 951–697–5308; mail, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046; or email *jchilders@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Alta Windpower Development, LLC, filed a ROW application for the AEWP. The project as originally proposed would have consisted of a 318-megawatt wind-energy generation facility on a 2,592-acre site (public and private lands) with 106 wind turbines, access roads, collector substation, operation and maintenance facility, temporary portable concrete batch plant, meteorological towers, and a transmission line. The proposed project would require approximately 568 acres of private lands. The project site is located approximately 3 miles northwest of the town of Mojave and approximately 11 miles east of the city of Tehachapi.

The Selected Alternative consists of 2,592 acres, of which 1,999 acres are on public land under the jurisdiction of the BLM and 593 acres are on private land under the jurisdiction of Kern County. The Selected Alternative contains 51 wind turbines capable of generating up to 153 megawatts.

The project site is within the planning boundary of the CDCA Plan. The CDCA Plan, while recognizing the potential compatibility of wind-energy generation facilities with other uses on public lands, requires that all sites associated with power generation or transmission not already identified in the Plan be considered through the BLM's land use plan amendment process. As a result, prior to approval of a ROW grant for the AEWP, the BLM must amend the CDCA Plan to allow the wind-energy generating project on that site. The approved amendment to the CDCA Plan specifically revises the CDCA Plan to allow for the development of the AEWP and ancillary facilities on land managed by the BLM.

Publication of the Notice of Availability of the Proposed Plan Amendment/Final EIS for the AEWP on February 15, 2013 (78 FR 11171), initiated a 30-day protest period for the proposed amendment to the CDCA Plan which concluded on March 18, 2013. The BLM received one timely protest which was resolved prior to the execution of the ROD. The protest resolution is summarized in the ROD and addressed in the separate Director's Protest Resolution Report. The proposed amendment to the CDCA Plan was not modified as a result of the protest received or the resolution.

Simultaneously with the protest period, the Governor of California conducted an expedited 30-day consistency review of the proposed CDCA Plan amendment to identify any inconsistencies with State or local plans, policies, or programs; no inconsistencies were identified by the Governor's Office.

Because this decision is approved by the Acting Assistant Secretary for Lands and Minerals, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6

Jamie Connell,

Acting Deputy Director for Operations, Bureau of Land Management.

[FR Doc. 2013–13059 Filed 5–31–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Third Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for certain Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have member terms expiring this year. These RACs provide advice and recommendations to the BLM on land use planning for management of the National System of Public Lands within their respective geographic areas. The RACs covered by this request for nominations are identified below. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than July 3, 2013.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the address of respective BLM State Offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Lauren Luckey, U.S. Department of the Interior, Bureau of Land Management, National Advisory Committee Coordinator, Correspondence, International, and Advisory Committee Office, 1849 C Street NW., MS–MIB 5070, Washington, DC 20240; 202–208–3806. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR part 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of state, county, or local elected office, employees of a state agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the state in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama

Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed background information nomination form; and

—Any other information that addresses the nominee's qualifications.

This request for public nominations also applies to the Steens Mountain Advisory Council in Oregon established pursuant to Section 131 of the Steens Mountain Cooperative Management and Protection Act of 2000. The Council advises the Secretary of the Interior in managing the Cooperative Management and Protection Area.

Simultaneous with this notice, BLM State offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the state and the Steens Mountain Advisory Council in Oregon. If you have already submitted your RAC nomination materials for 2013 you will not need to resubmit. Nominations for the following RACs should be sent to the appropriate BLM offices as noted below:

Alaska

Alaska RAC

Thom Jennings, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, 970–271–3335.

Montana and Dakotas

Central Montana RAC

Ann Boucher, Montana State Office, BLM 5001 Southgate Drive, Billings, Montana 59101, 406–896–5011.

Dakotas RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, 406–233–2800.

Eastern Montana RAC

Mark Jacobson, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, 406–233–2800.

Western Montana RAC

David Abrams, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701, 406–533–7617.

Nevada

Sierra Front-Northwestern Great Basin RAC

Christopher Rose, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502, 775–861–6480.

Oregon/Washington

Southeast Oregon RAC; Steens Mountain Advisory Council

Tara Martinak, Burns District Office, BLM, 28910 Hwy 20, West Hines, Oregon 97738, 541–573–4519.

Eastern Washington RAC

Robert St. Clair, Spokane District Office, BLM, 1103 N. Fancher Road, Spokane Valley, Washington 99212, 509–536–1200.

Authority: 43 CFR 1784.4–1.

Jamie Connell,

Acting Deputy Director.

[FR Doc. 2013–13056 Filed 5–31–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.EI0000.241A]

Call For Nominations and Comments for the 2013 National Petroleum Reserve in Alaska Oil and Gas Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office is issuing a call for nominations and comments on tracts for oil and gas leasing for the 2013 National Petroleum Reserve in Alaska (NPR–A) oil and gas lease sale. A map of the NPR–A showing available areas is online at *http://www.blm.gov/ak.*

DATES: BLM-Alaska must receive all nominations and comments on these tracts for consideration on or before July 18, 2013.

ADDRESSES: Mail nominations and/or comments to: State Director, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., Mailstop 13; Anchorage, AK 99513–7504. Before including your address, phone number, email address, or other personal identifying information in your nominations and/or 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.

FOR FURTHER INFORMATION CONTACT: Wayne Svejnoha, BLM-Alaska Energy and Minerals Branch Chief, 907–271–4407. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: When describing tracts nominated for leasing or providing comments please use the NPR–A maps, legal descriptions of the tracts, and additional information available through the BLM-Alaska Web site at *http://www.blm.gov/ak.*

Authority: 43 CFR 3131.2.

Bud Cribley,

State Director.

[FR Doc. 2013–13080 Filed 5–31–13; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–417 and 731–TA–953, 957–959, 961, and 962 (Second Review)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

Institution of five-year reviews.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on carbon and certain alloy steel wire rod (''wire rod'') from Brazil and the antidumping duty orders on wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 3, 2013.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–285, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Comments on the adequacy of responses may be filed with the Commission by August 16, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 22, 2002, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of wire rod from Brazil (67 FR 64871). On October 29, 2002, Commerce issued antidumping duty orders on imports of wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine (67 FR 65944–65947). Following the five-year reviews by Commerce and the Commission, effective July 30, 2008, Commerce issued a continuation of the countervailing duty order on wire rod from Brazil and the antidumping duty orders on wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine (73 FR 44218). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first five-year review determinations, the Commission found a single *Domestic Like Product* encompassing all wire rod, including grade 1080 tire cord and grade 1080 tire bead wire rod that Commerce excluded from the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first five-year review determinations, the Commission found a single *Domestic Industry* consisting of all domestic producers of wire rod.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the Asame particular matter@ as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should

conduct expedited or full reviews. The deadline for filing such comments is August 16, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term Afirm@ includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2007.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of

Subject Merchandise imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2007, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: May 29, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–13092 Filed 5–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–746]

Certain Automated Media Library Devices; Decision to Modify In Part a Remand Initial Determination; Termination of the Investigation With A Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify in part the presiding administrative law judge's (''ALJ'') remand initial determination (''RID'') issued on March 26, 2013, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 in the above-captioned investigation. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on November 24, 2010, based upon a complaint filed by Overland Storage, Inc. of San Diego, California (''Overland'') on October 19, 2010, and supplemented on November 9, 2010. 75 *FR* 71735 (Nov. 24, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) by reason of infringement of certain claims of U.S. Patent No. 6,328,766 (''the '766 patent'') and U.S. Patent No. 6,353,581 (''the '581 patent''). The notice of investigation named as respondents BDT AG of Rottweil, Germany; BDT Solutions GmbH & Co. KG of Rottweil, Germany; BDT Automation Technology (Zhuhai FTZ), Co., Ltd. of Zhuhai Guandang, China; BDT de Mexico, S. de R.L. de C.V., of Jalisco, Mexico; BDT Products, Inc., of Irvine, California; Dell Inc. of Round Rock, Texas (''Dell''); and International Business Machines Corp. of Armonk, New York (''IBM''). The Office of Unfair Import Investigations was not named as a party.

On August 15, 2011, the ALJ granted Overland's motion for partial termination of the investigation with respect to claims 6 and 11 of the '766 patent and claims 8, 11 and 17–19 of the '581 patent (Order No. 26) (not reviewed by the Commission, Aug. 26, 2011). On September 2, 2011, the ALJ terminated BDT-Solutions GmbH & Co. KG from the investigation upon a motion for summary determination of no violation (Order No. 31) (not reviewed by the Commission, Sept. 21, 2011). The ALJ also terminated IBM and Dell based on a license agreement (Order No. 35) (affirmed by the Commission, Jan. 27, 2012). Accordingly, BDT AG, BDT Automation Technology (Zhuhai FTZ) Co., Ltd., BDT de México, S. de R.L. de C.V, and BDT Products, Inc. (collectively, ''the BDT Respondents'') remain as respondents in this investigation.

On June 20, 2012, the ALJ issued his final ID, finding no violation of section 337 by the BDT Respondents with respect to any of the asserted patent claims. On August 20, 2012, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. 77 *FR* 51573 (August 24, 2012). On September 4,

2012, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. The Commission did not receive any non-party submissions.

On October 25, 2012, the Commission affirmed, with modified reasoning, the ALJ's finding that the BDT Respondents did not contributorily infringe the asserted claims of the '766 patent. In addition, the Commission reversed the ALJ's finding that the IBM documents related to the IBM 3570, 7331, 7336, and 3494 tape libraries do not qualify as ''printed publications'' under 35 U.S.C. 102, but affirmed the ALJ's finding that the IBM documents related to the IBM 3575 tape library do not qualify as ''printed publications.'' With respect to the '581 patent, the Commission construed the limitation ''linear array'' as recited in claims 1, 2, 5, 6, 7, 9, 10, 12, and 16 to mean ''media element storage locations [or cells] arranged in one or more straight lines.'' The Commission affirmed, with modified reasoning, the ALJ's finding of noninfringement of the '581 patent. The Commission also affirmed, with modified reasoning, the ALJ's finding that the '581 patent was not shown to be invalid (except for claim 15). In addition, the Commission reversed the ALJ's finding that Overland had failed to satisfy the technical prong of the domestic industry requirement. Finally, the Commission affirmed, with modified reasoning, the ALJ's rejection of the BDT Respondents' patent exhaustion defense with respect to both asserted patents.

The Commission also determined to remand the investigation to the ALJ with respect to certain issues regarding both asserted patents, and to extend the target date for completion of the investigation. 77 *FR* 65907 (Oct. 31, 2012). Specifically, the Commission remanded the investigation to the ALJ to consider whether the IBM documents that qualify as prior art anticipate or, in combination with their associated IBM tape library and/or U.S. Patent No. 6,434,090, render obvious the asserted claims of the '766 patent. The Commission also remanded the investigation to the ALJ to consider whether Overland has satisfied the economic prong of the domestic industry requirement for the '581 patent.

On November 8, 2012, Overland filed a petition for reconsideration of the Commission's determination that the BDT Respondents did not infringe claims 10, 12, and 16 of the '581 patent, which the BDT Respondents opposed. On December 11, 2012, the Commission granted Overland's petition for reconsideration in view of the Commission's determination that the accused products met its modified construction of the term ''linear array.'' A revised Commission Opinion issued on January 9, 2013 clarifying that the Commission affirms, with modified reasoning, the ALJ's finding of noninfringement of claims 1–2, 5–7 and 9 of the '581 patent. In addition to the issues remanded to the ALJ in the Commission's Order dated October 25, 2012, the Commission further remanded the investigation to the ALJ to make all findings regarding infringement of claims 10, 12, and 16 based on the existing record.

On November 13, 2012, the BDT Respondents filed a motion for leave to file out of time a petition for reconsideration of the Commission's determination that the BDT Respondents waived consideration of certain testimonies in support of a finding of invalidity of the '581 patent. The Commission found good and sufficient reason to waive the 14-day limit of rule 210.47 and granted the BDT Respondents' motion for leave to file out of time a petition for reconsideration. However, the Commission determined that the petition did not comply with 19 CFR 210.47 because it was not confined to ''new questions'' raised by the Commission determination and for which the BDT Respondents had no opportunity to submit arguments.

On remand, the ALJ extended the target date for completion of the investigation to June 25, 2013. The Commission determined not to review the ID setting the new target date. Notice (Jan. 9, 2013). On March 26, 2013, the ALJ issued his RID in this investigation. The ALJ found no violation of section 337 by the BDT Respondents in connection with the asserted patents. Specifically, the ALJ found that the accused products do not directly infringe claims 10, 12 and 16 of the '581 patent because they do not meet the limitations: ''a linear array of media element cells in fixed position with respect to said housing''; ''a linear array of media element cells in fixed relative position;'' ''a moveable cell coupled to said end of said magazine adjacent to said opening''; and ''at least one movable cell coupled to one end of said linear array.'' Having found no direct infringement, the ALJ concluded that the BDT Respondents also do not induce or contributorily infringe claims 10, 12 and 16 of the '581 patent. The ALJ further found that the economic prong of the domestic industry requirement has been satisfied for the '581 patent under 19 U.S.C. 1337(a)(3)(A), (B), and (C). With respect to the '766 patent, the ALJ found that claims 1–3 and 7–9 are invalid under 35 U.S.C. 102 as anticipated by the 3494 Operator Guide, but that the claims are not invalid under 35 U.S.C. 103 for obviousness.

On April 8, 2013, Overland petitioned for review of certain aspects of the RID. In particular, Overland requested that the Commission review and reverse the RID's finding of no infringement of claims 10, 12 and 16 of the '581 patent and the RID's finding that the asserted claims of the '766 patent are invalid as anticipated by the 3494 Operator Guide. The BDT Respondents did not file a petition for review, but did file a response to Overland's petition for review on April 15, 2013.

On May 10, 2013, the Commission determined to review in part the RID. Specifically, the Commission determined to review the RID's finding that Overland did not show by a preponderance of the evidence that the accused products infringe claim 16 of the '581 patent. The Commission also determined to review the RID's finding that the asserted claims of the '766 patent are invalid as anticipated by the 3494 Operator Guide. The Commission determined not to review the remaining issues decided in the RID. Pursuant to the Commission Orders of October 25, 2012 and December 11, 2012, the ALJ's determinations on the unreviewed issues became the Commission's final determinations.

On review, the Commission has determined to affirm, based on the Commission's construction of the limitation ''cells in fixed relative position,'' the RID's finding that Overland has not shown by a preponderance of the evidence that the accused products infringe claim 16 of the '581 patent. The Commission has also determined to affirm the RID's finding that the BDT Respondents have shown by clear and convincing evidence that the 3494 Operator Guide anticipates the asserted claims of the '766 patent. A Commission opinion on remand will be issued concurrently with this notice.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

Issued: May 28, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Meetings Officer.

[FR Doc. 2013–12980 Filed 5–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Review)]

Circular Welded Carbon-Quality Steel Pipe From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on circular welded carbon-quality steel pipe from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 3, 2013. Comments on the adequacy of responses may be filed with the Commission by August 16, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 22, 2008, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of circular welded carbon-quality steel pipe from China (73 FR 42545–42549). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of circular welded carbon-quality steel pipe coextensive with the scope of the investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the single *Domestic Industry* consisting of all known domestic producers of circular welded carbon-quality steel pipe.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is July 22, 2008.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–286, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 3, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 16, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to Be Provided In Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S.

dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: May 29, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–13085 Filed 5–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–796]

Certain Electronic Digital Media Devices and Components Thereof; Determination To Review a Remand Initial Determination; Schedule for Filing Written Submissions on Certain Issues Under Review and on Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the remand initial determination (''RID'') issued by the presiding administrative law judge (''ALJ'') on March 26, 2013 in its entirety. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and the public on the issues of remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 5, 2011, based on a complaint filed by Apple Inc. (''Apple'') of Cupertino, California. 76 *FR* 47610 (Aug. 5, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic digital media devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,479,949 (''the '949 patent''); RE 41,922 (''the '922 patent''); 7,863,533 (''the '533 patent''); 7,789,697 (''the '697 patent''); 7,912,501 (''the '501 patent''); D558,757 (''the D'757 patent''); and D618,678 (''the D'678 patent'') (collectively, ''the Asserted Patents''). The complaint further alleges the existence of a domestic industry. The respondents named in the Commission's notice of investigation are Samsung Electronics Co, Ltd. of the Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America, LLC of Richardson, Texas (collectively, ''Samsung''). A Commission investigative attorney (''IA'') participated in the investigation.

On May 3, 2012, the ALJ issued an ID partially terminating the investigation with respect to all claims of the '533 patent; claims 1–3, 11, 12, 15, 16 and 21–27 of the '697 patent; and claim 3 of the '949 patent (Order No. 17) (not reviewed by the Commission, May 3, 2012).

On October 24, 2012, the ALJ issued his final ID in this investigation finding a violation of section 337 in connection with the claim of the D'678 patent; claims 1, 4–6 and 10–20 of the '949 patent; claims 29, 30 and 33–35 of the '922 patent; and claims 1–4 and 8 of the '501 patent. The ALJ found no violation of section 337 in connection with the claim of the D'757 patent; claims 31 and 32 of the '922 patent; and claims 13 and 14 of the '697 patent. The ALJ also found that the asserted claims of the Asserted Patents were not shown to be invalid. The ALJ further found that a domestic industry in the United States exists that practices the Asserted Patents, except for the '697 patent. On November 7, 2012, the ALJ issued his recommended determination on remedy and bonding.

Apple and Samsung filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The IA filed only a response to the petitions for review. On December 3, 2012, Apple and Samsung filed public interest comments pursuant to Commission rule 210.50(a)(4). That same day, non-party Google filed a submission in response to the Notice of Request for Statements on the Public Interest. *See 77 FR* 68829–30 (Nov. 16, 2012).

On January 23, 2013, the Commission determined to review the final ID in its entirety, and remand the investigation to the ALJ with respect to certain issues related to the '922 patent and the '501 patent, as set forth in the Remand Order. 78 *FR* 6130 (Jan. 29, 2013). In light of the remand, briefing on the reviewed issues and on remedy, bonding, and the public interest were postponed until the Commission's consideration of the RID.

On March 26, 2013, the ALJ issued his RID. The RID found that claims 34 and 35 of the '922 patent are infringed by the text-selection feature of the accused products and that claim 3 of the '501 patent is not infringed by the accused products represented by the Transform SPH–M920. On April 9, 2013, Apple and Samsung petitioned for review of the RID. The IA did not petition for review of the RID. On April 17, 2013, Apple, Samsung and the IA filed their respective responses to the petitions for review.

Having reviewed the evidence of record and the parties' submissions, the Commission has determined to review the RID in its entirety.

In connection with its review of the final ID and the RID, the parties are invited to brief only the discrete issues enumerated below, with reference to the applicable law and the evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

1. Is the ''material or apparatus'' used in practicing the patented methods asserted in the '949 patent that is relevant to a substantial noninfringing use analysis the ''combination of source code and hardware elements relied upon by Dr. Balakrishnan in his witness statement,'' as argued by Apple (Apple Pet. at 50–51)? To the extent that it is, what evidence in the record shows that the ''combination of source code and hardware elements'' is adapted for use in an infringement of the '949 patent and that it does not have any substantial noninfringing use?

2. Is the ''material or apparatus'' used in practicing the patented methods asserted in the '922 patent that is relevant to a substantial noninfringing use analysis the ''combination of source code and hardware elements relied upon by Dr. Balakrishnan in his witness statement,'' as argued by Apple (Apple Pet. at 50–51)? To the extent that it is, what evidence in the record shows that the ''combination of source code and hardware elements'' is adapted for use in an infringement of the '922 patent and that it does not have any substantial noninfringing use?

3. Please comment on the requirement, if any, that the ''material or apparatus'' relevant to a substantial noninfringing use analysis must be ''separate and distinct'' from all other functions of a larger product in view of *Lucent Techs., Inc.* v. *Gateway, Inc.,* 580 F.3d 1301 (Fed. Cir. 2009); *i4i Ltd. P'ship* v. *Microsoft Corp.,* 598 F.3d 831 (Fed. Cir. 2010); *Fujitsu Ltd.* v. *Netgear Inc.,* 620 F.3d 1321 (Fed. Cir. 2010); and any other pertinent legal authorities. To the extent there is such a requirement, what evidence in the record shows that each ''combination of source code and hardware elements relied upon by Dr. Balakrishnan in his witness statement'' with respect to the '949 and the '922 patents is a ''separate and distinct'' feature of the Browser or Gallery application that warrants treating it separately in analyzing contributory infringement.

4. Please discuss and cite the evidence of record, if any, that shows a third party performed each and every step of asserted claims 29–35 of the '922 patent.

5. Please discuss and cite the evidence of record, if any, that shows Samsung actively and knowingly aided and abetted another's direct infringement of claims 29–35 of the '922 patent.

6. Please discuss and cite the evidence of record, if any, that shows Samsung actively and knowingly aided and abetted another's direct infringement of claims 11–16 of the '949 patent.

7. Does the intrinsic evidence mandate a narrow construction of the ''feature of interest'' limitation in claims 31 and 32 of the '922 patent that excludes control elements in the translucent image? What impact, if any, do the additions in the specification made by reissue have on the construction of the claims added during reissue? In particular, please comment on the applicability of the embodiment disclosing a translucent keyboard to the construction of the ''feature of interest'' limitation. *See* JX–0004 at 3:12–22 and FIGS. 19–21c. What evidence in the record, if any, supports construing control characters or functional buttons on a keyboard as a ''feature of interest'' in the context of the '922 patent?

8. What evidence in the record supports or does not support whether a person of ordinary skill in the art would understand from the '697 patent disclosure that a ''signal path'' exists even in the absence of a plug in the receptacle? To the extent the ''signal path'' exists even in the absence of a plug in the receptacle, what record evidence shows that the detection circuitry is ''coupled to the detect contact and the first receptacle contact'' as recited in claim 12 of the '697 patent when the claimed detection circuitry detects that ''the signal path is a low or a high impedance path''?

9. Please comment on Samsung's argument that Apple's Petition as to the '697 patent relies on a newly proffered claim construction argument that construes the claim limitation ''to detect that the signal path is a low or a high impedance path'' in claim 12 to require ''circuitry that detects that the signal path is a low impedance path only.'' *See* Samsung Resp. at 83–84.

10. Assuming *arguendo* that Apple's proposed construction of the claimed detection circuitry limitation is adopted (*see* Apple Pet. at 69–76), what record evidence shows that this limitation is disclosed or suggested in the prior art of record, including in the JP published unexamined application HII–288766 (''Kawano'') and the YP–T7J portable media player?

In connection with the final disposition of this investigation, the

Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In particular, the Commission is interested in the following issues, with reference to the applicable law, the existing evidentiary record, and if necessary, additional sworn testimony or expert declarations:

1. How would remedial orders barring the entry and further distribution of the Samsung articles alleged to infringe the asserted claims of the Asserted Patents affect the public interest as identified in 19 U.S.C. 1337(d)(1) and (f)(1)?

2. In what ways, if any, should a remedy with respect to infringement of one or more of the Asserted Patents be specifically tailored to avoid harm to the public interest, as identified in 19 U.S.C. 1337(d)(1) and (f)(1)?

If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. (Dec. 1994).

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding with respect to the Asserted Patents. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, June 11, 2013. Initial submissions by the parties are limited to 100 pages, not including submissions related to remedy, bonding, and the public interest. Reply submissions must be filed no later than the close of business on Wednesday, June 19, 2013. All reply submissions are limited to 60 pages, not including submissions related to remedy, bonding, and the public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–796'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: May 28, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–12979 Filed 5–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–011]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 7, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none

2. Minutes

3. Ratification List

4. Vote in Inv. Nos. 731–TA–1207–1209 (Preliminary)(Prestressed Concrete Steel Rail Tie Wire from China, Mexico, and Thailand). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before June 7, 2013; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 14, 2013.

5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 30, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–13161 Filed 5–30–13; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Reimbursement-Assisted Reemployment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs sponsored information collection request (ICR) revision titled, ''Claim for Reimbursement-Assisted Reemployment,'' (Form CA–2231) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 3, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-1240-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Federal Employees' Compensation Act, in relevant part, provides vocational rehabilitation services to eligible injured Federal employees to facilitate their return to work. *See* 5 U.S.C 8104(a). The cost of providing these vocational rehabilitation services is paid from the Federal Employees' Compensation Fund, and annual appropriations language provides the OWCP with legal authority to use amounts from the Fund to reimburse private sector employers for a portion of the salary of reemployed disabled Federal workers hired through the OWCP Assisted Reemployment Program. Employers submit Form CA–2231 to claim reimbursement for wages paid under the Assisted Reemployment Program. The OWCP is revising this information collection to enhance its disclosures to persons with disabilities; however, no changes are sought for the information collected on Form CA–2231. For additional substantive information about this ICR, see the related noticed published in the **Federal Register** on February 19, 2013 (78 FR 11683).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0018. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New information collection requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0018. The OMB is particularly interested in comments that:

- 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.

Agency: DOL–OWCP.

Title of Collection: Claim for Reimbursement-Assisted Reemployment.

OMB Control Number: 1240–0018.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 42.

Total Estimated Number of Responses: 168.

Total Estimated Annual Burden Hours: 84.

Total Estimated Annual Other Costs Burden: $82.

Dated: May 28, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12981 Filed 5–31–13; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment and Training Administration

Publication of the 5-Year Research and Evaluation Strategic Plan Program Years 2012–2017

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given of the publication of the U.S. Department of Labor, Employment and Training Administration's (USDOL/ETA) 5-Year Research and Evaluation Strategic Plan for 2012–2017. Under Section 171 of the Workforce Investment Act, every 2 years the Secretary of Labor is required to transmit to Congress a strategic plan for pilots, demonstrations, and research over the next 5 years in areas related to workforce development programs and policies. The full report is available here: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_21.pdf.*

FOR FURTHER INFORMATION CONTACT: Wayne S. Gordon, USDOL/ETA, Office of Policy Development and Research, N–5641, 200 Constitution Avenue NW., Washington, DC 20210; phone: (202) 693–3179; fax: (202) 693–2766.

Dated: Signed in Washington, DC, on this 23rd day of May 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–12966 Filed 5–31–13; 8:45 am]

BILLING CODE 4510–FM–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

ACTION: Notice.

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on June 11, 2013. The meeting will commence at noon, EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

Matters To Be Considered:

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2013
3. Public comment regarding LSC's fiscal year 2015 appropriations request
   - Presentation by a representative of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants
   - Presentation by a representative of National Legal Aid and Defender Association
   - Other interested parties
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 30, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–13176 Filed 5–30–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request an extension of an approved information collection used by participants in training courses and workshops that NARA conducts. NARA needs the information to assess customer satisfaction with course content and delivery and to ensure that the training meets the customer's needs. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 2, 2013 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Training and Event Evaluation.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 7,000.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 583 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training courses and workshops. NARA distributes the approved form to the course coordinators on the intranet for customization of selected elements,

shown as shaded areas on the form submitted for clearance.

Dated: May 23, 2013.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2013–13037 Filed 5–31–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 3, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

Jennifer Burns, Department of Biological Sciences, CPISB 202C, University of Alaska, Anchorage, AK 99508.

Permit Application: 2014–003.

Activity for Which Permit Is Requested

Take and Enter Antarctic Specially Protected Areas (ASPA's). The applicant plans to study the interactions between reproduction, molt, and condition is particularly important in Weddell seals, as molt coincides with the end of embryonic diapause and the start of active gestation. The research will address three fundamental questions: (1) What intrinsic and/or extrinsic factors determine molt phenology in Weddell seals; (2) How does late season condition and molt status influence current pregnancy and future parturition rates; and (3) To what extent might changes in food availability during the austral summer impact molt timing and future reproductive success. To achieve project goals, 24 adult females of known-age and known-reproductive history will receive a full health assessment (mass, morphometrics, blood and tissue samples) and be outfitted with VHF (to facilitate relocation) and TDR/GPS tags (to track mid-summer behavior). Should any of these females be accompanied by nursing pups, the pups will be flipper tagged and weighed. In addition to handling activities, a range-wide population survey will be conducted. The applicant plans to enter ASPA 121-Cape Royds, ASPA 155-Cape Evans, and/or ASPA 157-Backdoor Bay, Cape Royds should any seals be relocated in the area. The applicant plans to salvage tissue samples from dead seals if found.

Location

Erebus Bay, McMurdo Sound Sea Ice, ASPA 121-Cape Royds, ASPA 155-Cape Evans, and/or ASPA 157-Backdoor Bay, Cape Royds.

Dates

November 1, 2013 to February 28, 2017.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2013–12959 Filed 5–31–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 24, 2013, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on May 25, 2013 to:

Ron Naveen, Permit No. 2014–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2013–12960 Filed 5–31–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Biological Sciences Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Biological Sciences Advisory Committee (#1110).

Date and Time: June 27, 2013; 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:00 p.m.

Place: This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Room 687, Arlington, VA 22230.

All visitors should contact the Directorate of Biological Sciences [call 703–292–8400 or send an email message to erchiang@nsf.gov] at least 24 hours prior to the teleconference to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

Type of Meeting: Open.

Contact Person: Charles Liarakos, National Science Foundation, Room 605, 4201 Wilson Boulevard, Arlington, VA 22230 Tel No.: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up of the Directorate for Biological Sciences.

Agenda: Items on the agenda include the BIO FY14 budget request, graduate education and CAREER programs, data management and access, and the draft NSF strategic plan for 2014–2018.

Dated: May 29, 2013

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–12996 Filed 5–31–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0087]

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 Forms 366, 366A, and 366B, ''Licensee Event Report.''

2. *Current OMB approval number:* 3150–0104.

3. *How often the collection is required:* As needed per Section 50.73 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensee event report system.'' The total number of reports is estimated to be 350 per year.

4. *Who is required or asked to report:* The holder of an operating license under 10 CFR Part 50 or a combined license under 10 CFR Part 52 (after the Commission has made the finding under § 52.103(g)).

5. *The number of annual respondents:* 104.

6. *The number of hours needed annually to complete the requirement or request:* 28,000 hours.

7. *Abstract:* Part of the NRC's function is to license and regulate the operation of commercial nuclear power plants to ensure protection of public health and safety and the environment in accordance with the Atomic Energy Act of 1954 (the Act) as amended. In order for the NRC to carry out these responsibilities, licensees must report significant events in accordance with 10 CFR 50.73, so that the NRC can evaluate the events to determine what actions, if any, are warranted to ensure protection of public health and safety or the environment. Section 50.73 requires reporting on NRC Forms 366, 366A, and 366B.

Submit, by August 2, 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–2013–0087.

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–2013–0087. Mail comments to the 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 13th day of May 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer. Office of Information Services.

[FR Doc. 2013–13013 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0013]

Agency Information Collection Activities; Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 8, 2013 (78 FR 15053).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Part 5 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.''

3. *Current OMB approval number:* 3150–0209.

4. *The form number if applicable:* NRC Form 781.

5. *How often the collection is required:* Part 5 follows provisions covered in 10 CFR part 4, Section 4.331 Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to report:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States).

7. *An estimate of the number of annual responses:* 200.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,600 hours (3,000 hrs. for reporting (5 hrs. per respondent) and 600 hrs. for recordkeeping (3 hrs. per recordkeeper)).

10. *Abstract:* Part 5 implements the provisions of Title IX of the Education Amendments of 1972, as amended, (except Sections 904 and 906 of these amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

The public may examine and have copied for fee publicly available documents, including the final 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 and questions should be directed to the OMB reviewer listed below by July 3, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0209), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 24th day of May 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–12976 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390; NRC–2013–0109]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene.

DATES: Comments must be filed by June 17, 2013. A request for a hearing must be filed by August 2, 2013.

ADDRESSES: You may submit comment 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–2013–0109. 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.

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: Andrew Hon, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8480; email: *andrew.hon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0109 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–2013–0109.

- *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 May 22, 2013, is available electronically in ADAMS under Accession No. ML13143A166.

- *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–2013–0109 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering 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 U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. 50–390, issued to Tennessee Valley Authority (the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Tennessee, Rhea County.

The proposed amendment would revise the WBN Unit 1 Technical Specifications (TSs) to allow a one-time extension to the Completion Time for TS Limiting Condition for Operation (LCO) 3.6.6 Required Action A.1 from 72 hours to 7 days for an inoperable Containment Spray (CS) Train B. This change is necessary to provide sufficient time to replace a leaking mechanical seal on CS Pump 1B–B. The pump repair is currently scheduled for the week of June 24, 2013. TVA requested this proposed TS change under exigent circumstances that the NRC expedite the review of the requested change to support approval by June 22, 2013.

Before 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.

Section 50.91(a)(6) of Title 10 of the *Code of Federal Regulations* (10 CFR) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. 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?

The proposed change does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. The proposed change will not alter assumptions relative to the mitigation of an accident or transient event. The proposed change has been evaluated for Incremental Core Damage Probability (ICCDP) and Incremental Large Early Release Probability (ICLERP) for the requested seven day period of CS Train B inoperability, and the results demonstrate that the change is acceptable.

Therefore, this proposed change does not increase 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?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, this 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?

Based on the Operability of the required containment ESF [engineered safety feature] systems for containment heat removal, the proposed change ensures that the accident analysis assumptions continue to be met. The design and operation of these systems are not affected by the proposed change. The safety analysis acceptance criteria are not altered by the proposed change.

Therefore, the proposed change does 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 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 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 the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing; Petition for Leave To Intervene

Within 60 days of this notice, any person(s) whose interest may be affected may file a request for hearing/petition to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/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 requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide 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.

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 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 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 30 days from June 3, 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 exigent license application, see the application for amendment dated May 22, 2013.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

Dated at Rockville, Maryland, this day of May 24, 2013.

For the Nuclear Regulatory Commission.

Andrew Hon,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–13093 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0070]

Final Interim Staff Guidance LR–ISG–2011–04; Updated Aging Management Criteria for Reactor Vessel Internal Components for Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–04, ''Updated Aging Management Criteria for Reactor Vessel Internal Components for Pressurized Water Reactors.'' This final LR–ISG revises the guidance in NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) and NUREG–1801, Revision 2, ''Generic Aging Lessons Learned Report'' (GALL Report), for the aging management of Pressurized Water Reactors (PWR) reactor vessel internals components exposed to reactor coolant environments.

ADDRESSES: Please refer to Docket ID NRC–2012–0070 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, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0070. 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.
- *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 LR–ISG–2011–04 is available in ADAMS under Accession No. ML12270A436.
- *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.
- *NRC's License Renewal Interim Staff Guidance Web site:* LR–ISG documents are available online, for a limited time, at *http://www.nrc.gov/reading-rm/doc-collections/isg/license-renewal.html.*

FOR FURTHER INFORMATION CONTACT: Mr. On Yee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1905; email: *On.Yee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISGs in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff developed LR–ISG–2011–04 to update its guidance in SRP–LR and GALL Report based on the conclusions of the NRC's revised safety evaluation on Electric Power Research Institute (EPRI) Technical Report No. 1022863, *Materials Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines (MRP–227–A),* dated December 2011 (ADAMS Accession No. ML12017A193 [Transmittal letter from the EPRI–MRP] and ADAMS Accession Nos. ML12017A194, ML12017A196, ML12017A197, ML12017A191, ML12017A192, ML12017A195 and ML12017A199 [Final Report]). The NRC's revised safety evaluation of EPRI Technical Report No. 1022863 may be accessed in ADAMS under Accession No. ML11308A770. The LR–ISG–2011–04 revises the recommendations in the GALL Report and the NRC staff's acceptance criteria and review procedures in the SRP–LR to ensure consistency with MRP–227–A and provides a framework to ensure that PWR license renewal applicants will adequately address age-related degradation and aging management of reactor vessel internal components during the term of the renewed license.

On March 20, 2012, (77 FR 16270), the NRC requested public comments on draft LR–ISG–2011–04. Subsequently, as published on April 19, 2012, (77 FR 23513), the NRC issued an editorial correction to the original notice to specifically identify the ADAMS Accession No. for additional documents associated with draft LR–ISG–2011–04.

The NRC received comments from the Nuclear Energy Institute by letter dated May 21, 2012 (ADAMS Accession No. ML12144A147), and from the Electric Power Research Institute and the Pressurized Water Reactor Owners Group Materials Subcommittee by letter dated May, 21, 2012 (ADAMS Accession No. ML12146A267). No other comments were submitted. The NRC considered these comments in developing the final LR–ISG. Detailed responses to the comments can be found in Appendix C of the final LR–ISG.

The final LR–ISG–2011–04 is approved for NRC staff and stakeholder

use and will be incorporated into NRC's next license renewal guidance document revision.

Backfitting and Issue Finality

Issuance of this final LR–ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' of 10 CFR. The basis for this determination is set forth in the ''Backfitting and Issue Finality'' section of the final LR–ISG.

Dated at Rockville, Maryland, this Tuesday, May 28, 2013.

For the Nuclear Regulatory Commission.

John Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–13088 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0107; Docket No. 52–016–COL]

Staff Requirements—SECY–12–0168—Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Petition for Review of LBP–12–19

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for written comment on requirements related to foreign ownership, control, or domination of commercial nuclear power plants.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting an assessment, and is seeking stakeholder views, on issues relating to foreign ownership, control, or domination (FOCD) of commercial nuclear power plants. The results and conclusions of this assessment, including any recommendations on any proposed modifications to guidance or practice on FOCD that may be warranted, will be provided in a voting paper for Commission review and approval.

DATES: Submit comments by August 2, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0107. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID nrc-2013–0107. 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.

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: Jo Ann Simpson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8388; email: *JoAnn.Simpson@.nrc.gov;* or Anneliese Simmons, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2791; email: *Anneliese.Simmons@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0107 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0107.
- *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 Commission issued SRM–12–0168 is available electronically under ADAMS Accession No. ML10370A150.
- *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–2013–0107 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

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II. Background

During recent years, there have been a number of licensing actions submitted to the NRC for review where issues related to FOCD existed. One cause is likely due to the increased globalization of economic activity and associated added complexity of the corporate arrangements. In response, the NRC's review of FOCD issues have become more numerous and detailed. Sections 103d. and 104d. of the Atomic Energy Act of 1954, as amended, (AEA), provide that the NRC may not issue a license to a corporation or other entity if the Commission knows (or has reason to believe) that it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. Moreover, the NRC may not, in any event, issue a license to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The Commission's regulation under Section 50.38 of Title 10 of the *Code of Federal Regulations* (10 CFR)

implements this statutory prohibition, providing that any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or an foreign government, shall be *ineligible to apply for and obtain a license.* (emphasis supplied).

With respect to combined license applications, the Commission's regulations under 10 CFR 52.75(a) further state any person (except one excluded by § 50.38 of the Commission's regulations) may file an application for a combined license for a nuclear power facility with the Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate.

On March 11, 2013, in SRM–12–0168, ''Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52–016–COL, Petition for Review of LBP–12–19,'' the Commission directed the staff to provide a fresh assessment on issues relating to FOCD including recommendations on any proposed modifications to guidance or practice on FOCD that may be warranted.

Specifically, the Commission is looking for comments on the limitation on FOCD as contained in Section 103d. of the AEA and the potential to satisfy statutory objectives through an integrated review of foreign ownership, control, or domination issues involving up to and including 100 percent indirect foreign ownership; criteria for assessing proposed plans or actions to negate direct or indirect foreign ownership or foreign financing of more than 50 percent but less than 100 percent, and the adequacy of guidance on these criteria; the availability of alternative methods such as license conditions for resolving—following issuance of a combined license—FOCD; and the agency's interpretation of the statutory meaning of ''ownership,'' and how that definition applies in various contexts, such as total or partial foreign ownership of a licensee's parent, co-owners, or owners who are licensed to own but not to possess or operate a facility.

It is the desire of the NRC to receive comments of a high quality from all stakeholders on issues relating to FOCD. The 60-day comment period is reasonable and is not anticipated to affect NRC deadlines. The allotted time will allow adequate time for the NRC to review comments, and organize and conduct a Category 3 Public Meeting on June 19, 2013, to facilitate additional stakeholder engagement and input.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of May 2013.

Christopher Regan,

Chief, Financial Analysis and International Projects Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–12596 Filed 5–31–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2013–0081]

Policy Statement on Adequacy and Compatibility of Agreement State Programs; Statement of Principles and Policy for the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statements; draft revisions and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing revisions to its policy statements on Agreement State Programs. Both the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and the ''Statement of Principles and Policy for the Agreement State Program'' have been revised to add information on security of radioactive materials and incorporate changes in the NRC's policies and procedures since the last revision in 1997. In addition to requesting comments on the revisions made to the policy statements, the NRC is specifically requesting comments on (1) Compatibility Category B in the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' (2) consideration of a performance based approach in determining Agreement State compatibility, and (3) performance based metrics in the adequacy determination of an Agreement State program.

DATES: Submit comments by August 19, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment 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–2013–0081. 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.

• *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

• *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Lisa Dimmick, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0694, email: *Lisa.Dimmick@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments
II. Background
III. Discussion
IV. Proposed Revision to Policy Statement on Adequacy and Compatibility of Agreement State Programs
V. Proposed Revision to Statement of Principles and Policy for the Agreement State Program
VI. Topics for Additional Comment
VII. Paperwork Reduction Act

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0081 when contacting the NRC about the availability of information for the proposed revisions of the policy statements. You may access information related to the proposed revisions of the policy statements, 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–2013–0081.

• *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may access public documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0081 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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II. Background

On August 25, 1993, the Commission requested the NRC staff to recommend improvements to the NRC's Agreement State Program to assure adequate protection of public health and safety. Among these improvements, the NRC staff, with participation from Agreement State representatives, developed two policy statements. The policy statements are entitled ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and ''Statement of Principles and Policy for the Agreement State Program.'' The Commission approved both policy statements on June 29, 1995, but deferred their implementation until all implementing procedures were completed and approved by the Commission. These policy statements became effective on September 3, 1997 (62 FR 46517).

In Staff Requirements Memorandum (SRM), ''SECY–10–0105, Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device'' (ADAMS Accession No. ML103360262) dated December 2, 2010, the Commission directed the NRC staff to update the Commission's ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and associated guidance documents to include both safety and source security considerations in the determination process. Because Agreement State adequacy and compatibility are key components of the Integrated Materials Performance Evaluation Program (IMPEP) process,[1] the Commission's Policy Statement on the ''Statement of Principles and Policy for the Agreement State Program'' is being revised concurrently. Two Working Groups operating in accordance with NRC Management Directive 5.3, ''Agreement State Participation in Working Groups,'' dated August 22, 2007 (ADAM Accession No. ML070940610), are drafting the revisions to these policy statements. The two Working Groups met concurrently and periodically interfaced in developing the proposed revisions. The revisions include adding information on security of radioactive materials and updating the policy statements to reflect subsequent changes in the NRC policies and procedures.

III. Discussion

The Commission tasked the staff with updating the Commission's Policy Statement, ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' and associated guidance, to include both safety and source security in the determination process. The Policy Statement as issued in 1997 continues to remain relevant and effectively serves the mission of the agency. However, the staff concluded that the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and the ''Statement of Principles and Policy for the Agreement State Program'' both required revision to meet the intent of the SRM by clarifying that security is part of the agency's health and safety mission and update the policy statements to include current policies, procedures, and practices.

Following the events of September 11, 2001, the NRC's regulatory oversight was enhanced. Additional security measures were developed and implemented. While safety and source security have always been inherent to the protection of public health and safety, the Working Groups recognized that the two policy statements needed to specifically acknowledge that the NRC and Agreement State oversight of these enhanced security measures should not be confused with the NRC's mission to promote the common defense and security. The Working Groups revised the purpose sections of the policy statements to indicate that public health and safety includes physical protection of ''agreement material.''

The two Working Groups also reconciled a difference in terminology in the policy statements as they were originally published. The ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' used the term ''agreement material'' to refer to byproduct, source, and small quantities of special nuclear material as defined in Section 274b. of the Atomic Energy Act (AEA) of 1954, as amended. The ''Statement of Principles and Policy for the Agreement State Program'' used the term ''AEA material'' to describe the same material. While the terms ''agreement material'' and ''AEA material'' are generally viewed as synonymous, using different terms in the policies may be construed as an indication that the NRC intended the terms to have different meanings. The Working Groups decided to use the term ''agreement material'' throughout both policy statements.

Policy Statement on Adequacy and Compatibility of Agreement State Programs

As explained in greater detail in Section VI, ''Topics for Additional Comment,'' of this document, the NRC is requesting comments on the language used to describe and define Compatibility Category B. The language from the 1997 version of the Policy Statement was left in place in the draft revision so that the input requested could be based on the description currently used when making a determination of Compatibility Category B. For Compatibility Category C, the Working Group felt it was important to clarify that program elements and regulations assigned this category of

[1] The NRC developed the IMPEP process to evaluate the adequacy and compatibility of Agreement State Programs and the adequacy of the NRC's nuclear materials program activities.

compatibility could be more restrictive than the equivalent NRC program element or regulation. Additionally, the NRC is requesting comments on what types of program elements should be designated as a Compatibility Category B. The NRC is also requesting comment as to whether the number of Compatibility Category B program element should be limited.

The NRC expects to hold two public meetings during the public comment period. The agendas for the two public meetings, including the dates and locations, will be posted on the NRC's public meeting schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Statement of Principles and Policy for the Agreement State Program

Several changes were made throughout the Policy Statement to demonstrate a clear connection between public health, safety, and security. The NRC and Agreement State radiation control programs maintain regulatory oversight for the safe and secure handling of nuclear materials. These programs have always included the security of nuclear materials as an integral part of their health and safety mission as it relates to minimizing the risk of exposure to workers and the public. Throughout the 1997 Policy Statement, the phrase ''safe use'' of material was used. To impart the concept that security is a necessary component of public health and safety, the phrase ''safe use'' of material was replaced with ''safe and secure use'' of material.

Several updates were made to align the Policy Statement with current practices under IMPEP. The Working Group expanded the text addressing the actions taken by the NRC as a result of program review findings to include options to address performance such as monitoring, heightened oversight, probation, suspension, and termination.

IV. Proposed Revision to Policy Statement on Adequacy and Compatibility of Agreement State Programs

Purpose

Section 274 of the AEA of 1954, as amended, provides for a Federal-State regulatory framework for the control of byproduct, source, and small quantities of special nuclear material (hereinafter termed ''agreement material'') as identified by Section 274b. of the AEA. The NRC, by agreement with a State under Section 274 of the AEA, relinquishes its regulatory authority in certain areas and allows the State Government to assume that regulatory authority, as long as the State program is adequate to protect public health and safety and compatible with the Commission's [2] program. For the purpose of this Policy Statement, ''public health and safety'' includes physical protection of agreement material.

Section 274 further directs the Commission to periodically review State programs to ensure compliance with the provisions of Section 274. This Policy Statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs established in accordance with Section 274. This Policy Statement clarifies the meaning and use of the terms ''adequate to protect public health and safety'' and ''compatible with the Commission's regulatory program'' as applied to the Agreement State program. The Policy Statement also describes the general framework that will be used to identify those program elements that Agreement State programs should implement to adequately protect public health and safety and to be compatible with the Commission's regulatory program. For the purposes of this Policy Statement, ''program element'' means any component or function of a radiation control regulatory program, including regulations and/or other legally binding requirements imposed on regulated persons, which contributes to implementation of that program. Finally, the Policy Statement reflects principles discussed in the Commission's ''Statement of Principles and Policy for the Agreement State Program,'' which should be considered in conjunction with this Policy Statement.

This Policy Statement is solely guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority. Nor does this Policy Statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted under this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

Background

The terms ''adequate'' and ''compatible'' represent fundamental concepts in the Agreement State program authorized in 1959 by Section 274 of the AEA. Subsection 274d. states that the Commission shall enter into an Agreement under subsection 274b., relinquishing the NRC's regulatory authority over certain materials in a State, provided that the State's program is adequate to protect public health and safety and is compatible, in all other respects, with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with States in the formulation of standards to assure that State and Commission standards will be coordinated and compatible. Subsection 274j(1) requires the Commission to review periodically the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274. Therefore, the Commission must review the actions taken by States under the Agreements to ensure that the programs continue to be adequate to protect public health and safety and compatible with the Commission's program.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff will seek the advice of the Agreement States. The Commission will consider such advice in its final decision.

Discussion

Section 274 of the AEA requires that Agreement State programs be both ''adequate to protect the public health and safety'' and ''compatible with the Commission's program.'' In accordance with Section 274 of the AEA, an Agreement State program should provide for an acceptable level of protection of public health and safety in an Agreement State (the ''adequacy'' component). The Agreement State should also ensure that its program serves an overall nationwide interest in radiation protection (the ''compatibility'' component).

Program elements for adequacy focus on the protection of public health and safety within a particular State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Many program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy.

[2] For the purposes of this Policy Statement the definition of Commission is equivalent to Title 10 of the *Code of Federal Regulations:* Commission means the five members of the NRC or a quorum thereof sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, as amended.

1. Adequacy

An ''adequate'' program should include those program elements not required for compatibility but necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. These program elements make up the category Health and Safety. An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of agreement material. The level of protection afforded by the program elements of the NRC's materials regulatory program is presumed to be that which is adequate to provide a reasonable assurance of protection of public health and safety. Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in Sections A. through E., that the Commission will use to define the scope of its review of the program. The Commission will also consider, when appropriate, other program elements of an Agreement State that appear to affect the program's ability to provide reasonable assurance of public health and safety protection. Such consideration will occur only if concerns arise.

A. Legislation and Legal Authority

State statutes should:

(1) Authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the Commission;

(2) Authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety;

(3) Authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and

(4) Be otherwise consistent with applicable Federal statutes.

In addition, the State should have existing legally enforceable measures such as generally applicable rules, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. For those items that have significant health and safety implications, the NRC shall identify legally binding requirements that should be adopted by Agreement States. The NRC expects that there will be a limited number of such requirements. In adopting such requirements, Agreement States should adopt the essential objectives of those of the Commission.

B. Licensing

The State should conduct appropriate evaluations of proposed uses of agreement material, before issuing a license, to assure that the proposed licensee's operations can be conducted safely and securely. Licenses should provide for reasonable assurance of public health and safety protection in relation to the licensed activities.

C. Inspection and Enforcement

The State should periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

D. Personnel

The State should be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

E. Incidents and Allegations

The State should respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

1. Compatibility

A ''compatible'' program should consist of those program elements necessary to meet a larger nationwide interest in promoting an orderly pattern of regulation of radiation protection. Those program elements are generally limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications. An Agreement State radiation control program is compatible with the Commission's regulatory program when its program does not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. For purposes of compatibility, the State should address the following Categories A, B, and C:

A. Category A—Basic Radiation Protection Standards

For purposes of this Policy Statement, this category includes ''basic radiation protection standards'' meaning dose limits, concentration and release limits related to radiation protection in Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR), that are generally applicable, and the dose limits in 10 CFR 61.41.[3] Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the Commission, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with ''adequate protection'' that take into account permissible balancing considerations such as economic cost and other factors.

B. Category B—Program Elements With Significant Transboundary Implications

The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications. Agreement State program elements should be essentially identical to those of the Commission.

C. Category C—Other Commission Program Elements

These are other Commission program elements that are important for an Agreement State to have in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding Commission program elements. Agreement State program elements may be more restrictive than Commission program elements; however, they

[3] The Commission will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is at least equivalent to that afforded by Commission requirements.

should not be so restrictive as to prohibit a licensed activity.

D. Category D—Program Elements Not Required for Compatibility

An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility A, B, or C). However, such program elements of an Agreement State relating to agreement material should:

(1) Be compatible with those of the Commission (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis);

(2) Not preclude, or effectively preclude, a practice [4] in the national interest without an adequate public health and safety or environmental basis related to radiation protection; and

(3) Not preclude, or effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety.

E. Category NRC—Areas of Exclusive NRC Regulatory Authority

These are program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the *Code of Federal Regulations.* However, an Agreement State may inform its licensees of these NRC provisions through a mechanism that is appropriate under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

Summary and Conclusions

To foster and enhance a coherent and consistent nationwide program for the regulation of agreement material, the Commission encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the Commission. However, the fact that an Agreement State's program is compatible with that of the Commission does not affect that State's obligation to maintain an adequate program as described in this Policy Statement.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the Commission will provide Agreement States a broad range of flexibility in the administration of individual programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the Commission allows Agreement States to fashion their programs so as to reflect specific State needs and preferences.

The Commission will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. The expectation is that these requirements will be limited. Requirements in these compatibility categories allow the Commission to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The Commission believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for coordinated and compatible regulation of agreement material across the country.

V. Proposed Revisions to Statement of Principles and Policy for the Agreement State Program

A. Statement of Principles and Policy for the Agreement State Program

Purpose

The purpose of this Statement of Principles and Policy for the Agreement State Program is to clearly describe the respective roles and responsibilities of the NRC and States in the administration of programs carried out under Section 274 of the AEA of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of nuclear materials.

This Policy Statement addresses the Federal-State interaction under the AEA: (1) to establish and maintain agreements with States under Section 274b. that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of byproduct, source, and small quantities of special nuclear material; and (2) ensure that post-agreement interactions among the NRC and Agreement State radiation control programs are coordinated, compatible, and continue to provide adequate protection of public health and safety.

Section 274 of the AEA provides for a special Federal-State regulatory framework for the control of byproduct, source, and small quantities of special nuclear material as identified by Section 274b. of the AEA. The NRC, by agreement with a State, relinquishes its authority under Section 274 of the AEA over practices involving some or all of these materials. The material over which the State receives regulatory authority under such agreements is hereinafter termed ''agreement material.''

The NRC and Agreement State radiation control programs maintain regulatory oversight for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of nuclear materials as an integral part of their health and safety mission as it relates to minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes these enhanced security measures.

This Policy Statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and that should be achieved in the administration of these programs.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

Statement of Legislative Intent

The AEA did not initially specify a role for the States in regulating the use of nuclear materials. Many States were concerned as to what their responsibilities in this area might be and expressed interest in seeing that the

[4] For the purposes of this Policy Statement, ''practice'' means a use, procedure, or activity associated with the application, possession, use, storage, or disposal of agreement material. The term ''practice'' is used in a broad and encompassing manner in this Policy Statement but does not include economic considerations. The term encompasses both general and specific activities involving the use of agreement materials.

boundaries of Federal and State authority were clearly defined. This need for clarification was particularly important in view of the fact that although the Federal Government retained sole responsibility for protecting public health and safety from the radiation hazards of byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had been borne for many years by the States.

Consequently, in 1959 Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to relinquish its regulatory authority over the use of these materials and for assumption of this authority by the States. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, the export and import of nuclear materials, and matters related to common defense and security.

In considering the legislation, Congress recognized that the Federal Government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the Commission to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the Commission would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

In order to relinquish its authority to a particular State, the Commission must find that program is compatible with the Commission's program for the regulation of agreement materials and that the State program is adequate to protect public health and safety. In addition, the Commission has an obligation, pursuant to Section 274j. of the AEA, to review existing Agreement State programs periodically to ensure continued adequacy and compatibility. Section 274j. of the AEA provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Section 274j. In these cases, the Commission must offer the State reasonable notice and opportunity for a hearing. In addition, the Commission may temporarily suspend all or part of an agreement in the case of an emergency situation.

B. Principles of Program Implementation and Program Assessment

The NRC is responsible for ensuring that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of agreement material. The basic elements of such regulatory programs include principles of good regulation in program administration and the ability to assess program performance on a consistent and systematic basis; the ability to ensure adequate protection of public health and safety including security of these nuclear materials; compatibility in areas of national interest; and sufficient flexibility to accommodate local needs and conditions. Each of these elements is reflected and addressed in specific sections of this Policy Statement.

1. Good Regulation Principles

In 1991, the Commission adopted ''Principles of Good Regulation'' to serve as a guide to both agency decision making and to individual behavior as NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, appropriate, and consistent. The ''Principles of Good Regulation'' recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The Commission further suggests that such principles may be useful as a part of a common culture that the NRC and the Agreement States share as co-regulators. Accordingly, the Commission encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program.

For a regulator to achieve independence nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information and must be documented with reasons explicitly stated.

Nuclear regulation is the public's business and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required and must be a constant agency goal. The NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.

Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes. Failure to adhere to these principles of good regulation in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. All involved should

welcome expressions of concern that indicate a program may not be operating in accordance with these principles and revise their program to more completely reflect these principles.

It is not intended that these principles of good regulation be established as formal criteria against which the NRC and Agreement State programs would be assessed. Rather, these principles should be incorporated into the day-to-day operational fabric of the NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that Government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of the NRC and Agreement State materials program managers and staff in the self-assessment of their respective programs and to use in the establishment of goals and objectives for the continual improvement of their respective programs. Deficiencies identified during the conduct of the NRC Region and Agreement State formal program performance reviews may indicate that the program is not adhering to these principles of good regulation. The organization being assessed should factor the need for these principles into its actions to address identified deficiencies.

2. Coherent Nationwide Effort

The mission of the NRC is to assure that civilian use of nuclear materials in the United States is carried out with adequate protection of public health and safety. NRC acknowledges its responsibility, shared with the Agreement States, to ensure that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of agreement material. The basic elements of such regulatory programs include the ability to ensure adequate protection of public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, the ability to assess program performance on a consistent and nationwide basis, and principles of good regulation in program administration.

3. Adequate To Protect Public Health and Safety

The NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs controlling the safe and secure use of agreement materials. Accordingly, the NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety.

4. Compatible in Areas of National Interest

The NRC and the Agreement States have the responsibility to ensure that consistent and compatible radiation control programs are administered. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should not only be effective and cooperatively implemented by the NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services, security of Category 1 and 2 radioactive sources, and safety reviews for the manufacture and distribution of sealed sources and devices. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of the NRC and each Agreement State to evaluate the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety.

5. Flexibility

With the exception of those compatibility areas where all programs should be essentially identical, to the extent possible, Agreement State radiation control programs for agreement materials should be provided with flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. However, the exercise of such flexibility should not preclude, or effectively preclude, a practice authorized by the AEA, and in the national interest. That is, a State would have the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequacy are still met and compatibility is maintained, and the more stringent requirements do not preclude or effectively preclude a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

C. New Agreements

Section 274 of the AEA requires that once a decision to request Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed agreement. This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the **Federal Register** to provide an opportunity for public comment. After consideration of public comments, if the Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

D. Program Assistance

The NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into agreements and to help them prior to the assumption of regulatory authority. Following assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing,

inspection, and limited enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC or other Agreement States, they are encouraged to do so. In addition, the NRC and Agreement States will keep each other informed about relevant aspects of their programs. The NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. Agreement States should provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

If an Agreement State experiences difficulty in program administration, the Commission would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the State's ability to discharge its responsibility to continue to ensure adequate protection of public health and safety. Under certain conditions Agreement States can also voluntarily return part or all of its Agreement State program, e.g., Sealed Source and Device evaluations and uranium recovery regulatory oversight (SECY–95–0136).

E. Performance Evaluation

Under Section 274 of the AEA, as amended, the Commission retains authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, the NRC will periodically evaluate Agreement State radiation control programs to determine whether the programs are adequate and compatible prior to entrance into a Section 274b. agreement and ensure they continue to be adequate and compatible after an agreement becomes effective.

The Commission, in cooperation with the Agreement States, established and implemented the Integrated Materials Performance Evaluation Program (IMPEP). The IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement. Performance indicators are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program. The IMPEP process employs a Management Review Board (MRB), composed of senior NRC managers and an Agreement State Liaison to make a determination of program adequacy and compatibility.

As a part of the performance evaluation process, the NRC will take any necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and provision of assistance to help address weaknesses or areas needing improvement within an Agreement State program. Enhanced oversight, suspension, or termination of an agreement may be considered for serious program deficiencies or emergencies. The NRC's actions will be based on a well-defined and predictable process and a performance evaluation program that will be consistently and fairly applied.

F. Levels of Agreement State Program Review Findings

The following discussion outlines the nature of the NRC findings regarding the NRC's Agreement State review process.

1. Adequacy

Finding 1—Adequate To Protect Public Health and Safety

If the NRC finds that an Agreement State program has met all of the IMPEP review criteria or that only minor deficiencies exist, the NRC would find that the Agreement State's program is adequate to protect public health and safety.

Finding 2—Adequate To Protect Public Health and Safety With Improvement Needed

If the NRC finds that an Agreement State program protects public health and safety, but is deficient in meeting some of the IMPEP review criteria, the NRC may find that the Agreement State's program is adequate with improvement needed. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, the NRC may also find that the program is adequate with improvement needed.

Finding 3—Not Adequate To Protect Public Health and Safety

If the NRC finds that an Agreement State program is significantly deficient in some or all of the review criteria, the NRC would find that the Agreement State's program is not adequate to protect public health and safety.

2. Compatibility

Finding 1—Compatible

If the NRC determines that an Agreement State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible.

Finding 2—Not Compatible

If the NRC determines that an Agreement State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States (i.e., creates conflicts, gaps, or duplication in regulation), the program would be found not compatible.

G. NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above findings. The appropriate action will be determined on a case-by-case basis by the MRB. Subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management.

If the NRC finds that a State program is adequate and compatible, no further action would be required, except a response by the State to any recommendations.

If serious performance issues are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting those issues. Circumstances that can lead to more frequent contact between the NRC and the Agreement State program include the following: identification of serious program deficiencies, previously identified deficiencies that have gone uncorrected for a significant period of time, and/or deficiencies in adopting required compatibility program elements.

If findings of subsequent reviews show that the State has taken appropriate corrective actions and that these actions have shown a sustained improvement in performance, the MRB will determine whether the status of an

Agreement State program may be moved to another level of oversight. If the MRB finds that all deficiencies have been corrected, it may determine that the Agreement State program is adequate and/or compatible.

Options to address serious performance issues include one or more of the following actions: monitoring, heightened oversight, probation, suspension, and termination.

1. Monitoring

Monitoring is an informal process that allows the NRC to maintain an increased level of communication with an Agreement State Program through periodic (usually bimonthly) calls between the NRC and State managers/staff. Monitoring is implemented in cases where weaknesses in a program have resulted in, or are likely to result in, less than satisfactory performance for one or more performance indicators. Monitoring may be considered based on results of a routine IMPEP review, a follow-up IMPEP review, a periodic meeting or other interaction with the Agreement State program. In cases where one or more performance indicators remain less than satisfactory or further degraded, the MRB will consider placing a State on Heightened Oversight.

2. Heightened Oversight

Heightened Oversight is a formalized process that allows the NRC to maintain an increased level of communication with an Agreement State usually through monthly calls between the NRC and State managers/staff. Heightened Oversight is implemented in cases where significant program weaknesses are identified, but are not determined to be serious enough to find the program inadequate to protect public health and safety. In addition to the monthly calls, a State placed on Heightened Oversight is required to submit a Program Improvement Plan describing actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The Program Improvement Plan allows the NRC to monitor the actions being taken and the implementation schedule for those actions that address the weaknesses identified based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program. If programmatic weaknesses are serious enough to find the program inadequate to protect public health and safety, or if weaknesses continue throughout the period of heightened oversight, the MRB may elect to make a recommendation to the Commission to place the Agreement State on probation.

3. Probation

Probation is a formalized process, requiring Commission approval and notification to the Agreement State's governor, which allows the NRC to maintain an increased level of communication with an Agreement State program. Probation is considered in cases where the State's program is found to be not adequate to protect public health and safety, or not compatible with the NRC's program. An Agreement State may also be placed on probation when it has not addressed previously identified program weaknesses. The process allows the NRC to monitor the actions being taken by the State to correct the identified weaknesses and the implementation schedule for those actions.

Probation would include all the requirements for Heightened Oversight previously described. In addition, the NRC would communicate its findings to a higher level of State management. Written notification of probationary status would be sent to the Governor of the State, a notice published in the **Federal Register**, and a press release issued. Notice would also be given to the State's Congressional delegation, the appropriate Congressional committee(s), and all Agreement and non-Agreement States.

If requested, the NRC may provide technical support for the maintenance of the regulatory program. The probationary period would normally be one year or less. At the end of that time, if the State has not addressed the deficiencies, the NRC may extend the probationary period or institute suspension or termination proceedings.

4. Suspension

Section 274j. of the AEA gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the AEA. In cases where program deficiencies are such that the Commission must take action to protect public health and safety, or if the program has not complied with one or more of the requirements of Section 274 of the AEA, the Commission may suspend all or part of its agreement with the State. In cases where a State has failed to respond in an acceptable manner during the probationary period, suspension may be considered.

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the **Federal Register**. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j(2) of the AEA also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed or is unable to take necessary action within a reasonable time.

In cases where the Commission decides to suspend the agreement, the NRC would communicate its findings to a higher level of State management. The NRC would issue an order temporarily suspending all or part of the 274b. agreement and an order to State licensees notifying them of the temporary suspension of all or part of the 274b. agreement. Written notification of suspension would be sent to the Governor of the State, a notice published in the **Federal Register**, and a press release issued. Notice would also be given to the State's Congressional delegation, the appropriate Congressional committee(s), and all Agreement and non-Agreement States.

5. Termination

Section 274j. of the AEA gives the Commission authority to terminate all or part of its agreement with a State if such termination is required to protect public health and safety, if the State program has not complied with one or more of the requirements of Section 274 of the AEA (e.g., is found to be not compatible with the Commission's program for regulation of agreement materials), or by State request. When the Commission finds such significant program deficiencies, the Commission would institute formal proceedings to terminate its agreement with the State. In cases where the State has requested termination of the agreement, notice and opportunity for a hearing are not necessary.

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the

Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination.

Also, notice of the proposed termination will be published in the **Federal Register**. There may be cases where termination will be considered even though the State program has not been placed on probation.

H. Program Funding

Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Section 274 of the AEA permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with the NRC. However, it is the NRC policy not to fund the establishment of new Agreement State programs. Regarding training, given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability.

I. Regulatory Development

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources.

The Conference of Radiation Control Program Directors, Inc. (CRCPD) assists its members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. CRCPD's mission, in part, is ''to promote consistency in addressing and resolving radiation protection issues.'' The CRCPD provides a forum for centralized communication on radiation protection matters between the States and the Federal Government and between individual States. One product of this forum is the development of the CRCPD Suggested State Regulations for use by its members. The NRC also reviews Suggested State Regulations for compatibility.

J. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement materials to identify specific changes that should be considered based on experience or to further improve overall performance and effectiveness. The changes considered may include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

VI. Topics for Additional Comment

The NRC is requesting additional comments on key topics in response to direction received from the Commission on the development of both Policy Statements (SRM–SECY–12–0112, ''Policy Statements in Agreement State Programs''). Specifically, the NRC is seeking comments on the following topics:

1. Section IV. Policy Statement on Adequacy and Compatibility of Agreement State Programs, Item 1.B. Compatibility Category B

(1) To clarify the meaning of a ''significant transboundary implication,'' the NRC is proposing to define a significant transboundary implication as ''one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis.'' However, the NRC recognizes that the use of the word ''particular'' can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of ''significant transboundary implication'' and whether the word ''particular'' should be replaced with the phrase ''significant and direct.''

(2) Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the Policy Statement.

(3) The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders, Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.

(4) The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundry implications, should be considered in the definition of significant transboundry implication.

(5) The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.

(6) The NRC is requesting comments on alternative versions of wording regarding what types of program elements will be assigned a Compatibility Category B designation as well as how limited in number these will be. The original Policy Statement published in 1997 stated, in part: ''The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications.'' The Working Group proposed keeping the language in the 1997 version of the Policy Statement; however, some believed that this statement could be interpreted to imply that the Commission is limited in its ability to assign rules in this compatibility category. Therefore, alternative language was proposed as follows: ''The Commission will limit this category to program elements that have significant transboundary implications. The Commission expects that these will be limited in number.'' Some members of the working group disagreed with this alternative language and believed that the original language should be retained. The details of this discussion are in Enclosure 3 of SECY–12–0112, ''Policy Statements on Agreement State Programs.'' In summary, some members of the Working Group believed that the original language in the 1997 version of the Policy Statement was not intended to dictate the Commission's authority but rather was to remind those staff proposing designations of compatibility B to the Commission for consideration that program elements of this designation should be few as opposed to many and should involve only significant transboundary implications. Additionally, by removing the distinction that there should be a small number of program elements, it deemphasizes the idea that Agreement States should be given flexibility when addressing the majority of program elements necessary for a compatible program.

2. Section IV. Policy Statement on Adequacy and Compatibility of Agreement State Programs, Item. Summary and Conclusions

The NRC is requesting comments on alternative versions of wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. This language would cover all regulatory requirements as compatibility category A, B, and C. (Agreement States are required to adopt regulatory requirements listed as Health and Safety to ensure their program is adequate to protect public health and safety, but not for compatibility purposes). In the third paragraph under ''Summary and Conclusions'' of the original Policy Statement published in 1997, it stated, in part: ''The Commission will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility.'' The Working Group proposed keeping this sentence as written; however, some members of the Working Group believed that that this sentence could be interpreted to imply that there is a requirement that the Commission minimize such requests to Agreement States, rather than a statement that reflects the expectation that situations justifying such requests will not arise frequently. The sentence was revised as follows: ''The Commission will identify regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. The expectation is that these requirements will be limited.'' Some members of the Working Group disagreed with this revision and believed that the original language should be retained. The details of this discussion are in Enclosure 3 of SECY–12–0112, ''Policy Statements on Agreement State Programs.'' In summary, some members of the Working Group believed that the original text places emphasis on the effort to minimize unnecessary burden on the Agreement States' means to accomplish the same goals as the NRC. Additionally, the suggested changes do not encourage careful consideration as to whether there are other possible options to meet the same intended goal.

3. Performance Based Approach for Determining Compatibility

Currently, Agreement States are afforded some flexibility to use approaches other than rulemaking, such as license conditions or orders, to implement requirements. The NRC staff is seeking additional input on whether a performance-based approach for determining compatibility of an Agreement State's radiation control program should be developed. Agreement States could be afforded additional flexibility to use other approaches to implement requirements. A performance-based approach would not rely on a requirement to adopt within 3 years from the effective date of the NRC regulation in order to determine compatibility of an Agreement State program. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation and an implementation plan to provide to the Commission for approval.

4. Adequacy Determinations of Agreement State Programs

The NRC staff is seeking additional input on whether: (1) a revised set of performance metrics could be used to replace, supplement, or expand upon IMPEP in determining adequacy of an Agreement State's radiation control program; and (2) a single holistic determination can be made that would accurately reflect the overall adequacy and compatibility of a program. Given the current environment of limited resources, it is imperative that the NRC be able to develop a clear set of performance based metrics that consider the limitations of an Agreement State program and provide increased flexibility without compromising public health and safety. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation or series of recommendations for Commission approval.

VI. Paperwork Reduction Act

This Policy Statement does not contain information collection requirements that are 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 documents displays a currently valid Office of Management and Budget control number.

Dated at Rockville, Maryland, this 28th day of May, 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 2013–13066 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0072]

Quality Verification for Plate-Type Uranium-Aluminum Fuel Elements for Use in Research and Test Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 2.3, ''Quality Verification for Plate-Type Uranium-Aluminum Fuel Elements for Use in Research and Test Reactors.'' This guide describes a method that the staff of the NRC considers acceptable for complying with the Commission's regulations concerning establishing and executing a quality assurance program for verifying the quality of plate-type uranium-aluminum fuel elements used in research and test reactors (RTRs).

ADDRESSES: Please refer to Docket ID NRC–2012–0072 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0072. 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.
- *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. Revision 2 of Regulatory Guide 2.3 is available in ADAMS under Accession No. ML12160A492. The regulatory analysis may be found in ADAMS under Accession No. ML12160A494.

• *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.

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FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7477; email: *Harriet.Karagiannis@nrc.gov,* or Geoffrey Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov,*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 2.3 was issued with a temporary identification as Draft Regulatory Guide, DG–2005. This guide describes a method that the staff of the NRC considers acceptable for complying with the Commission's regulations concerning establishing and executing a quality assurance program for verifying the quality of plate-type uranium-aluminum fuel elements used in RTRs. This guide describes methods that the NRC's staff considers acceptable to implement Section 50.34(a)(7) of Title 10 of the *Code of Federal Regulations* (10 CFR), which requires each applicant for a construction permit to build a production or utilization facility to describe in its preliminary safety analysis report the quality assurance program that will be applied to the design, fabrication, construction, and testing of the facility's structures, systems, and components.

II. Additional Information

The NRC published DG–2005 in the **Federal Register** on March 22, 2012 (77 FR 16868) for a 60-day public comment period. The public comment period closed on May 21, 2012. Public comments on DG–2005 and the NRC staff responses to the public comments are available in ADAMS under Accession No. ML12160A496.

III. Congressional Review Act

This regulatory guide is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as designated in the Congressional Review Act.

IV. Backfitting and Issue Finality

The NRC's backfit provisions are found in its regulations at 10 CFR 50.109, 70.76, 72.62, and 76.76, and its issue finality provisions are located in 10 CFR part 52. Under Section 50.2, non-power reactors are research or test reactors licensed in accordance with Sections 103 or 104.c of the AEA and 10 CFR 50.21(c) or 50.22 for research and development. Accordingly, the backfit provisions of Part 50 would be the only backfit provisions potentially implicated by the issuance of this regulatory guide. The NRC has determined that the backfit provisions in Section 50.109 do not apply to test, research, or training reactors because the rulemaking record for Section 50.109 indicates that the Commission intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record. The Part 52 issue finality provisions do not apply to test, research, or training reactors because these reactors are not licensed under Part 52. Therefore, no backfit determination need be made regarding the issuance of this regulatory guide.

Dated at Rockville, Maryland, this 23rd day of May, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–13090 Filed 5–31–13; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Employer Service and Compensation Reports; OMB 3220–0070. Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR part 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, *Supplemental Report of Service and Compensation,* and Form UI–41a, *Supplemental Report of Compensation,* to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent.

The RRB proposes no changes to Form UI–41 and UI–41a. The completion time for Form UI–41 and UI–41a is estimated at 8 minutes per response.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–41	350	8	47
UI–41a	100	8	13
Total	450		60

2. Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amends Section 202(t) of the Social Security Act, effective January 1, 1985, the Tier I or the overall minimum (O/M) portion of an annuity, and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21.

RRB Form G–45, Supplement to Claim of Person Outside the United States, is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. The RRB proposes no changes to Form G–45.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–45	100	10	17

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–12987 Filed 5–31–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

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 an Open Meeting on Wednesday, June 5, 2013 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

- The Commission will consider a recommendation to propose amendments to certain rules under the Investment Company Act that govern the operation of money market funds and related amendments to Form PF under the Investment Advisers Act.

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: May 29, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–13111 Filed 5–30–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69641; File No. SR–NYSEArca–2013–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Arca Options Rule 6.62(cc) To Remove References to Functionality Described as the Post No Preference Light Only Quotation

May 28, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 16, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete NYSE Arca Options Rule 6.62(cc) to remove references to functionality described as the Post No Preference Light Only Quotation (''PNPLO Quotation''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Arca Options Rule 6.62(cc) to remove references to the PNPLO Quotation. The Exchange adopted Rule 6.62(cc) in June of 2012.[4] As set forth in the rule, a PNPLO Quotation is an electronic Market Maker quotation that, upon initial entry into the NYSE Arca System, is only eligible to execute against displayed liquidity on the Consolidated Book. As adopted, a PNPLO Quotation that, upon entry, would execute exclusively against non-displayed liquidity is immediately rejected. Additionally, a PNPLO Quotation that, upon entry, would execute against both displayed and non-displayed liquidity executes only against the displayed liquidity, but not against the non-displayed liquidity, and any remaining size of the PNPLO Quotation will be rejected. Furthermore, a PNPLO Quotation that, upon entry, would execute exclusively against displayed liquidity executes against the displayed liquidity and any remaining size of the PNPLO Quotation is placed on the Consolidated Book and treated like a standard Market Maker quotation. Lastly, a PNPLO Quotation that would not execute against either displayed or non-displayed liquidity is placed in the Consolidated Book and treated as a standard Market Maker quotation.

In December 2012, the Exchange stated that it would announce the implementation date of the proposed rule change in a Trader Update to be published within 90 days following the date of filing. The Exchange further stated that the implementation date would be within 90 days following publication of the Trader Update announcing the date of implementation.[5] However, the development and implementation of the technology supporting the PNPLO Quotation functionality has taken longer than anticipated to complete. The Exchange currently believes that the PNPLO Quotation functionality will not be ready within the 180-day time period from November 20, 2012, the initial date of filing. Additionally, the Exchange is planning to revise the manner by which the functionality of the PNPLO Quotation would be offered, which would necessitate a rule change. Because the Exchange has not yet finalized the implementation of this enhanced functionality, the Exchange believes it is appropriate to delete the functionality of the PNPLO Quotation from its rules until such time as the new functionality is ready to be implemented and file a new rule proposal in connection with the proposed new functionality.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the removal of an unavailable functionality will add transparency and clarity to the Exchange's rules. Additionally, the removal would reduce potential confusion that may result from having unavailable functionality in the Exchange's rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. The proposed change is not designed to address any competitive issue but rather would delete unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

[4] *See* Securities Exchange Act Release No. 67252 (June 25, 2012), 77 FR 38879 (June 29, 2012) (Order approving PNPLO Quotation); *see also* Securities Exchange Act Release No. 66937 (May 7, 2012), 77 FR 27820 (May 11, 2012) (''Notice''). The Exchange filed for immediate effectiveness to extend the availability of the PNPLO Quotation to non-Penny classes. *See* Securities Exchange Act Release No. 68339 (December 3, 2012), 77 FR 73109 (December 7, 2012) (SR–NYSEArca–2012–130) (''December 2012 Notice'').

[5] *See* December 2012 Notice at 73110.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

Commission to waive the 30-day operative delay, noting that doing so would provide clarity as to what functionality is offered by the Exchange and would enable the Exchange's rules to immediately reflect the functionality available on the Exchange. The Exchange also notes that, since the PNPLO Quotation functionality is not actually available, its removal would not have a negative effect on investors. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–51. 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–51 and should be submitted on or before June 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13035 Filed 5–31–13; 8:45 am]

BILLING CODE 8011–01–P

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69643; File Nos. SR–BYX–2013–008]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending the Attestation Requirement of Rule 11.24 Allowing a Retail Member Organization To Attest That ''Substantially All'' Orders Submitted to The Retail Price Improvement Program Will Qualify As ''Retail Orders''

May 28, 2013.

I. Introduction

On February 12, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow Retail Member Organizations (''RMOs'') to attest that ''substantially all,'' rather than all, orders submitted to the Retail Price Improvement Program (''Program'') qualify as ''Retail Orders.'' The proposed rule change was published for comment in the **Federal Register** on March 1, 2013.[3] The Commission received one comment on the proposal.[4] On April 12, 2013, the Commission extended the time for Commission action on the proposed rule change to May 30, 2013.[5] The Exchange submitted a response to the comment letter on May 17, 2013.[6] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange began operating its Program after it was approved by the Commission on a pilot basis in November, 2012.[7] Under the current rules, a member organization that wishes to participate in the Program as a RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that ''any order'' submitted as a Retail Order[8] will qualify as such under BYX Rule 11.24.

The proposal seeks to lessen the attestation requirements of RMOs that submit ''Retail Orders'' eligible to receive potential price improvement through participation in the Program. Specifically, the Exchange proposes to amend Rule 11.24 to provide that an RMO may attest that ''substantially all''—rather than all—of the orders it submits to the Program are Retail Orders as defined in Rule 11.24(a)(2).

The Exchange represented that it believes the categorical nature of the current ''any order'' attestation requirement is preventing certain member organizations with retail

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 68975 (Feb. 25, 2013), 78 FR 13915.

[4] *See* Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

[5] *See* Securities Exchange Act Release No. 69369, 78 FR 23320 (April 18, 2013).

[6] *See* Letter to the Commission from Eric J. Swanson, Senior Vice-President and General Counsel, BATS Y-Exchange, dated May 24, 2013 (''Response Letter'').

[7] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71650 (December 3, 2012) (''Program Approval Order'').

[8] A Retail Order is defined in Rule 11.24(a)(2) as ''an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

customer business from participating in the Program. According to the Exchange, some of these member organizations that wish to participate in the Program represent both ''Retail Orders,'' as defined in Rule 11.24(a)(2), as well as other agency order flow that may not meet the strict definition of ''Retail Order.'' The Exchange understands that, due to technical limitations in order management systems and routing networks, such member organizations may not be able to fully segregate Retail Orders from other agency, non-Retail Order flow. As a result, the Exchange believes that some member organizations have chosen not to participate in the Program because they cannot satisfy the current categorical attestation requirement, although they could satisfy the proposed ''substantially all'' requirement.

The Exchange clarified in its proposal that the ''substantially all'' standard is meant to allow only *de minimis* amounts of orders to participate in the Program that do not meet the definition of a Retail Order in Rule 11.24 and that cannot be segregated from bona fide Retail Orders due to systems limitations. Under the proposal, the Exchange would require that RMOs retain in their books and records adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange.[9]

III. Comment Letter and the Exchange's Response

The Commission received one comment letter on the proposal. The comment letter expressed concern over the proposed ''substantially all'' attestation requirement primarily for four reasons.

First, the comment letter questioned whether the proposal would undermine the rationale on which the Commission approved the Retail Price Improvement Program. According to the commenter, when the Commission granted approval of the Program, along with exemptive relief in connection with the operation of the Program, it did so with the understanding that the Program would service ''only'' retail order flow. To the extent the proposal would potentially allow non-Retail Orders to receive price improvement in the Program, the commenter suggested that the Commission should reexamine its rationale for granting the exemptive relief relating to the Program.

In response, the Exchange noted that the proposed amendment is designed to permit isolated and *de minimis* quantities of agency orders that do not qualify as Retail Orders to participate in the Program because such orders cannot be segregated from Retail Orders due to systems limitations. The Exchange also noted that several significant retail brokers have chosen not to participate in the Program currently because of the categorical ''any order'' standard, and that the proposed ''substantially all'' standard would allow the significant amount of retail order flow represented by these brokers the opportunity to receive the benefits of the Program. Additionally, the Exchange noted that the Program is designed to replicate the existing practices of broker-dealers that internalize much of the market's retail order flow off-exchange, and that the Program, as modified by the ''substantially all'' proposal, would offer a competitive and more transparent alternative to internalization.

Second, the commenter expressed its belief that the Exchange did not sufficiently explain why retail brokers are not able to separate all Retail and non-Retail Orders, and thereby satisfy the current attestation requirement. The commenter expressed its belief that the Commission should require additional explanation as to how retail brokers could satisfy the proposed ''substantially all'' standard if they could not satisfy the current standard, including an analysis of the costs and benefits to retail brokers of implementing technology changes to identify orders as Retail or non-Retail. Furthermore, the commenter suggested that the Exchange's proposal is at odds with the situation found in options markets where exchanges and brokers distinguish between public and professional customers—a distinction the commenter analogized to the Retail v. non-Retail distinction.

The Exchange responded that several retail brokers have explained that their order flow is routed in aggregate for retail execution purposes and that a *de minimis* amount of such flow may have been generated electronically, thus not meeting the strict Retail Order definition. According to the Exchange, these retail brokers have chosen not to direct any of their significant shares of retail order flow to the Program because the cost of complying with the current ''any order'' standard, such as implementing any necessary systems changes, is too high. The Exchange represented that the retail brokers have indicated their willingness to comply with the proposed ''substantially all'' standard, as well as their ability to implement the proposed standard on their systems with confidence. The Exchange further responded that the distinction between public and professional customers in the options market is not like distinction between Retail and non-Retail Orders; the former distinction turns on volume and is thus an easier bright-line threshold to implement, while the distinction between Retail and non-Retail Orders turns on whether the order originated from a natural person, which imposes a higher threshold for order flow segmentation purposes.

Third, the commenter contended that the proposed ''substantially all'' standard is overly vague. According to the commenter, the Exchange's proposed guidance on what constitutes ''substantially all'' is so vague that it could allow a material amount of non-retail order flow to qualify for the Program. The commenter suggested that, should the Commission approve the proposal, it should first establish a bright-line rule to define what constitutes ''substantially all'' retail order flow.[10]

The Exchange responded that the proposal represents only a modest modification of the attestation requirement. In this respect, the Exchange noted that the proposal would permit only isolated and *de minimis* quantities of agency orders to participate in the Program that do not satisfy the strict definition of a Retail Order but that cannot be segregated from Retail Orders due to systems limitations. Furthermore, the Exchange noted that an RMO's compliance with this requirement would be monitored and subject to books and record-keeping requirements.

Fourth, the commenter stated that the proposal may cause an exponential increase in monitoring and recordkeeping burdens associated with the Program. The commenter expressed its belief that it could be especially difficult for the Exchange not just to identify non-retail order flow, but also to monitor whether such flow exceeded a *de minimis* amount. The commenter also questioned whether the potential difficulty of the Exchange monitoring its

[9] The Exchange noted in its Response Letter that the Chicago Board Options Exchange, Incorporated (''CBOE''), on behalf of the Exchange, will review a member organization's compliance with these requirements. *See* Response Letter, *supra* note 6 at 3.

[10] The commenter cited one example where a ''de minimis'' transaction is defined in 17 CFR 242.101(b)(7), in connection with a distribution of securities, as ''less than 2%.''

Program might increase the likelihood that members may be subject to unfair discrimination in the Program's approval and disqualification process.

In response, the Exchange noted that it will issue Trader Notices to provide clear guidance on how the ''substantially all'' standard will be implemented and monitored. The Exchange also noted that the Program is designed to attract as much retail order flow as possible, and that, should RMOs begin submitting substantial amounts of non-retail order flow, liquidity providers would become less willing to participate in the Program. Finally, the Exchange disagreed with the commenter's statement that a standard that provides a *de minimis* number of exceptions would be any harder to enforce that a standard that permitted no exceptions.

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter received, and the Exchange's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed ''substantially all'' standard is a limited and sufficiently-defined modification to the Program's current RMO attestation requirements that does not constitute a significant departure from the Program as initially approved by the Commission.[13] The proposal makes clear that to comply with the standard, RMOs may submit only isolated and *de minimis* amounts of agency orders that cannot be segregated from Retail Orders due to systems limitations.[14] Furthermore, as the Exchange noted, RMOs will need to adequately document their compliance with the ''substantially all'' standard in their books and records. Specifically, an RMO would need to retain adequate documentation that substantially all orders sent to the Exchange as Retail Orders met that definition, and that those orders not meeting that definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange. The Commission also notes that the CBOE will, on behalf of the Exchange, monitor an RMO's compliance with this requirement.

Additionally, the Commission finds that the Exchange has provided adequate justification for the proposal. The Exchange represented that, as several significant retail brokers explained to them, the current ''any order'' standard is effectively prohibitive, given the brokers' order flow aggregation and management systems. The Exchange further represented that these retail brokers indicated their systems would allow them to comply with the ''substantially all'' standard, as proposed. By allowing these retail brokers to participate in the Program, the proposal could bring the potential benefits of the Program, including price improvement and increased transparency,[15] to the retail order flow that these brokers represent.[16]

[11] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission notes that it approved the Program on a pilot basis subject to ongoing Commission review.

[14] While the Commission recognizes the potential benefit of the commenter's suggestion concerning a bright-line definition of *de minimis, see supra* note 10, the Commission believes that, in light of the facts surrounding the instant proposal, the proposal, and the guidance that the Exchange will provide to its members on this point, are sufficiently clear. The Commission also notes that the example the commenter cites is found in Regulation M, which governs different circumstances than those at issue here.

[15] For a more detailed discussion of the Program's potential benefits, *see* Program Approval Order, *supra* note 7.

[16] The commenter also expressed concern that this proposal may increase the burden upon the Exchange in monitoring compliance with the Program. The Commission finds that any potential concerns raised by this assertion, which is disputed by the Exchange, are outweighed by the potential benefits of the proposal; namely, that the proposal may allow more retail orders the opportunity to participate in the Program and receive the attendant benefits of the Program. With respect to the commenter's concern that members may be subject to unfair discrimination in the approval and disqualification process for participation in the Program, the Commission notes that it previously found that the Program's provisions concerning the certification, approval, and potential disqualification of RMOs not inconsistent with the Act. *See* Program Approval Order, *supra* note 7, at note 41.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BYX–2013–008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13036 Filed 5–31–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69642; File No. SR–OCC–2013–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide That OCC, Rather Than an Adjustment Panel of the Securities Committee, Will Determine Adjustments to the Terms of Options Contracts to Account for Certain Events, Such as Certain Dividend Distributions or Other Corporate Actions, That Affect the Underlying Security or Other Underlying Interest

May 28, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to provide that OCC, rather than an adjustment panel of the Securities Committee, will determine adjustments to the terms of options contracts to account for certain events, such as certain dividend distributions or other corporate actions, that affect the underlying security or other underlying interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this proposed rule change is to authorize OCC, rather than adjustment panels of the Securities Committee,[3] to determine option contract adjustments and to determine the value of distributed property involved in such adjustments. Other conforming or clarifying changes to the By-Laws relating to adjustments and/or adjustment panels also are being proposed.

1. Background and Purpose of Proposed Rule Change

Certain corporate actions—such as declaration of dividends or distributions, stock splits, rights offerings, reorganizations, or the merger or liquidation of an issuer—affecting an underlying security may require an adjustment to the terms of the overlying options. For example, in a two-for-one stock split, the overlying options might also be split two-for-one, so that each option would continue to cover the same number of shares but with an exercise price equal to half of the pre-split price. The basic procedural rules governing such ''adjustments'' in the terms of outstanding options are set forth in Section 11 of Article VI of OCC's By-Laws, and the substantive rules specifically covering adjustment of stock options are set forth in Section 11A of Article VI. Although much less common, it is also possible that events affecting indexes and other underlying interests could also require adjustment of the overlying options. Rules for adjustment of such other options are generally found in the By-Law provisions applicable to such other options.

The procedural rules of Article VI, Section 11 of the By-Laws provide that all adjustments to option contracts be determined on a case-by-case basis by an adjustment panel of the Securities Committee composed of two representatives[4] of each exchange that trades an option on the underlying security and the OCC Chairman (or his representative). All actions are determined by majority vote, with OCC voting only to break a tie. Besides determining particular adjustments in individual cases, Article VI, Section 11 also authorizes the Securities Committee to adopt statements of policy or interpretations governing option adjustments in general. Additionally, the Securities Committee is authorized to determine the value of distributed property involved in stock option adjustments as stated in Article VI, Section 11A(f).

The options exchanges asked OCC to evaluate possible changes to the structure and procedures which govern option contract adjustments. The request was prompted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. In addition, the exchanges have expressed concern that exchange representatives involved in adjustment decisions may sometimes be subject to undue pressure from investors. Accordingly, the exchanges asked OCC to investigate whether changes to adjustment procedures could insulate the exchanges from undue pressure while concurrently providing greater consistency and efficiency in making adjustment decisions.

2. Description of Proposed Changes

Discussions among OCC and the exchanges concerning potential changes to Securities Committee governance in respect of adjustments yielded a consensus that the exchanges should retain policy-making authority under the adjustment By-Laws through the Securities Committee but that OCC should be the sole determiner of particular adjustment decisions, thereby eliminating adjustment panels convened for the purpose of determining adjustments of particular option contracts. The Securities Committee ratified the following recommendations by unanimous vote:

(i) The policy making role of the Securities Committee should be unchanged. As members of the Securities Committee, exchanges should retain authority to determine adjustment policy in general.

(ii) OCC should apply the adjustment By-Laws and Interpretations to determine particular adjustments on a case-by-case basis. An adjustment panel comprised of exchange and OCC representatives should *not* be called to determine a particular adjustment, thereby insulating the exchanges from investor pressure to determine a particular outcome.[5]

(iii) OCC and the exchanges should retain unrestricted ability to mutually discuss considerations pertaining to any adjustment decision or policy.

(iv) OCC should be given authority to determine the value of distributed property involved in contract adjustments.

These recommendations were reviewed with OCC's Board of Directors, which unanimously approved them by authorizing the filing of this proposed rule change.

Notwithstanding the elimination of exchange representative adjustment panels, panels of exchange representatives would still retain their existing functions and authority under other provisions of OCC's By-Laws. For example, those panels would retain the authority to fix exercise settlement amounts for cash-settled options where a closing price for the underlying is otherwise unavailable.[6]

The types of adjustments for which exchange representative panels may continue to be convened would be limited to very rare situations involving market closures or the unavailability of accurate pricing, and would need to be done on very short notice, unlike dividend adjustments, for which there can be a period of time between the announcement of a dividend and the decision of the panel. Accordingly, it is much less likely that exchange representatives on these panels would be subject to the same risk of undue pressure from investors. These situations are also less likely to fit within a policy or precedent that could

[3] The OCC Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

[4] The Commission has approved an amendment to OCC's By-Laws under which only one representative of each relevant exchange is required on an adjustment panel. Securities Exchange Act Release No. 34–67333 (July 2, 2012), 77 FR 40394 (July 9, 2012) (SR–OCC–2012–07). However, the amendment will not be implemented until an amendment to the Options Disclosure Document reflecting this change is made. Interpretation and Policy .01 to Article VI, Section 11 clarifies that until such time as the amendment to the Options Disclosure Document is made and only one representative is required, an adjustment panel must have two representatives of each exchange that trades an option on the underlying security.

[5] There is precedent for this approach in that OCC currently determines all contract adjustments for security futures. *See* Article XII, Sections 3 and 4 of OCC's By-Laws.

[6] *See, e.g.,* Article XIV, Section 5, Article XVII, Section 4, Article XXII, Section 4 and Article XXIV, Section 4.

be prescribed in advance by the Securities Committee, and therefore it would be more difficult for the Corporation to make the decisions without the input of the relevant exchanges.

3. Discussion

As a result of the proposed changes described above, adjustment panels for the purpose of determining adjustments of particular options contracts would cease to exist, and exchanges would have no obligation or authority to determine a particular adjustment. OCC would determine the appropriate application of the By-Laws and Interpretations and Policies, but the exchanges would retain policy making authority as members of the Securities Committee. In this policy making capacity, actions of the Securities Committee would continue to require approval by a majority vote.

Occasionally, there may be unique aspects of a corporate event that justify departure from adjustment policy or precedent, or that involve a situation for which there is no existing adjustment policy or precedent. Such events may also highlight a need for a more general reformulation of adjustment policy. Under the proposed changes, if OCC determines such aspects to be present, OCC would determine in its sole discretion any adjustment to be applied in the particular case. The Securities Committee would not initiate policy changes ''ad hoc'' to address a particular case (which would be a *de facto* determination of a particular adjustment decision). Instead, after OCC determined a particular adjustment, the Securities Committee, in its discretion, would determine the appropriateness of adopting prospective policy changes or clarifications.[7]

Although OCC and the exchanges believe it is feasible for OCC to independently determine adjustments, both are averse to losing valuable exchange experience and insight that is now brought to bear in adjustment decisions. Accordingly, OCC and the exchanges believe that they should retain unrestricted ability to discuss with each other any considerations pertaining to an adjustment decision or policy—with the understanding that adjustment decisions would be made solely by OCC and the exchanges would be involved solely in an advisory capacity. Accordingly, nothing in the present proposal would prohibit either the exchanges or OCC from initiating conversations concerning adjustment policy or particular adjustment decisions, but neither would such consultation be required.[8] Furthermore, to ensure continued exchange involvement in determining adjustment policy, OCC intends to call periodic meetings of the Securities Committee to discuss policy issues and review recent experience with contract adjustments.[9] Such meetings will be held on a quarterly or more frequent periodic basis.

Occasionally option adjustments involve the substitution of cash value in lieu of delivery of property. For example, this is the case when a security does not trade in the United States or cash in lieu of property is involved. Currently, the Securities Committee has authority to determine such cash value. OCC is proposing that it would instead be authorized to determine cash value in these cases since it would have sole discretion to determine contract adjustments.

The proposed changes would apply only to the functions of OCC and the Securities Committee in the determination of option contract adjustments as described in Article VI, Sections 11 and other By-Law provisions.[10] The Securities Committee—or panels comprised of representatives of the Securities Committee—in respect of actions that do *not* involve option contract adjustments would retain all other functions and authority granted under the By-Laws, including, for example, the ability to fix index option settlement values in cases of market disruption [11] and similar actions.

Adjustment provisions of the By-Laws pertaining to classes of options other than stock options sometimes provide for adjustment panels by referring to Article VI, Section 11. Insofar as Article VI, Section 11 would be modified to eliminate the need for adjustment panels, the requirement for adjustment panels to determine contract adjustments for these other types of option contracts would also be eliminated, with case by case adjustment decisions determined solely by OCC.

4. Other Changes

In addition to the principal purpose underlying this rule change as described above, certain other conforming and/or clarifying changes are being proposed. These changes are intended to update the By-Laws to eliminate stale rule provisions, to conform cross-references contained in other By-Laws to changes being proposed herein and to clarify certain interpretations adopted under the By-Laws to reflect a recent policy determination made by the Securities Committee in accordance with its authority granted under Article VI, Section 11 of OCC's By-Laws. These changes generally are described below.

OCC is proposing to modify or eliminate certain adjustment related By-Law provisions because, due to industry or other changes, there is no longer any open interest in options covered by such provisions. For example, equity options previously had traded with exercise prices expressed in either fractions or decimals. All exercise prices for equity options now are expressed in decimals, and all open interest in options series for which exercise prices were expressed in fractions has expired. Several By-Law provisions are being modified or eliminated to reflect this circumstance.[12]

OCC also is proposing to eliminate other stale provisions, including those found within Interpretation and Policy .01 under the Article VI, Section 11, which relates to the determination of ''ordinary cash dividends or distributions'' for which no adjustment is ordinarily made. These provisions preserved the ''10% rule'' (*i.e.,* the former method used to determine whether a cash dividend or distribution was ordinary) for application to certain series that had open interest prior to rescission of the 10% rule. Open interest in all such ''grandfathered'' series has expired, and therefore these provisions are no longer necessary. Changes would also be made to Article XIV, Section 3A(a)(3) in relation to

[7] This approach was followed in 2006 in response to a special cash dividend. In that case, adjustment panels determined to depart from precedent and adjust certain ETF options where the ETF distributed pro rata dividends based on the amount of a special dividend paid by the issuer of one of the component stocks in the ETF. Following these adjustments, the Securities Committee recommended to the OCC Board a policy reformulation. *See* Interpretation .08 to Article VI, Section 11A.

[8] Confidentiality of the communications between OCC and the Exchanges would continue to be observed—as it is today.

[9] As a practical matter, even if adjustments are determined solely by OCC it would still be necessary for OCC and the exchanges to coordinate the operational execution of all option adjustments. This coordination includes, but is not limited to, the determination of an effective date, option symbols and strike prices and the publication of notices.

[10] *See, e.g.,* [sic] Article XII, Sections 3 and 4; Article XIV, Section 3A; Article XV, Section 4; Article XVI, Section 3; Article XVII, Section 3; Article XX, Section 4; Article XXII, Section 3; Article XXIII, Section 4; and Article XXIV, Section 6.

[11] *See, e.g.,* By-Law Article XVII, Section 4.

[12] *See, e.g.,* the proposed changes to the definition of the term ''adjustment increment,'' Article I, Section 1.A(2); Article VI, Section 11A(d); Interpretation & Policy .09 under Article VI, Section 11A; and Article XII, Section 3(d).

binary options for which the underlying is an equity interest.

OCC's Securities Committee is empowered under the By-Laws to adopt statements of policy or interpretations having general application to specified types of events or specific kinds of cleared contracts. Recently, the Securities Committee issued a clarifying interpretation with respect to determinations of corporate issuers to accelerate or defer payments of otherwise ordinary dividends. More specifically, the Securities Committee determined that such events would not, as a general rule, affect the ordinary nature of such dividends subject to the evaluation of these events on a case-by-case basis.[13] Comparable changes, as applicable, would be made to Article XIV, Section 3A. Other changes being proposed are conforming in nature in that they update cross-references to By-Laws and Rules proposed to be amended.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended, (the ''Act'') [14] and the rules and regulations thereunder because the proposed changes would help promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the settlement of securities transactions [15] by providing OCC with sole discretion for particular adjustment decisions to help ensure that decisions are consistent, efficient and free from undue influence and by providing conforming and clarifying changes to OCC's By-Laws and Rules to help ensure that OCC maintains a well-founded, transparent and enforceable legal framework as required by Rule 17Ad–22(d)(1).[16] The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

OCC will not implement these proposed rule changes until the effectiveness of an amendment to the Options Disclosure Document relating to the proposed changes.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact, or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change primarily affects OCC's clearing members and their customers, but it would not impose any additional burden on them because options are already subject to adjustment and the revised procedures apply equally to all clearing members. OCC does not believe that providing OCC with sole discretion for particular adjustment decisions, rather than continuing to rely on adjustment panels consisting of exchange representatives, would inhibit access to any of OCC's services or disadvantage or favor any user of OCC's services in relationship to any other such user. In fact, OCC believes that the proposed rule change would promote competition among participants in the options markets because it would help ensure that adjustment decisions are consistent, efficient and free from undue influence and therefore it would promote certainty, fairness and a level playing field in the options markets with respect to when and how participants are affected by adjustments.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest and consistent with the requirements of the Act applicable to clearing agencies because it would promote competition in the options markets that OCC serves and not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–OCC–2013–05 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.

All submissions should refer to File Number SR–OCC–2013–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site: *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_05.pdf*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2013–05 and should be submitted on or before June 24, 2013.

[13] Securities Exchange Act Release No. 34–68531 (December 21, 2012), 77 FR 77157 (December 31, 2012) (SR–OCC–2012–26).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(d)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12975 Filed 5–31–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Lanbo Financial Group, Inc.; Order of Suspension of Trading

May 30, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lanbo Financial Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 30, 2013, through 11:59 p.m. EDT on June 12, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–13157 Filed 5–30–13; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 2, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Certificate of Coverage Request—20 CFR 404.1913—0960–0554.* The United States has agreements with 24 foreign countries to eliminate double Social Security coverage and taxation where, except for the provisions of the agreement, a worker would be subject to coverage and taxes in both countries. These agreements contain rules for determining the country under whose laws the worker's period of employment is covered, and to which country the worker will pay taxes. The agreements further dictate that, upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information we collect assists us in determining a worker's coverage and in issuing a U.S. certificate of coverage as appropriate. Per our agreements, we ask a set number of questions to the workers and employers prior to issuing a certificate of coverage; however, our agreements with Denmark, Netherlands, Norway, and Sweden require us to ask more questions in those countries. Respondents are workers and employers wishing to establish exemption from foreign Social Security taxes. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Requests via Letter—Individuals (minus Denmark, Netherlands, Norway, & Sweden)	5,320	1	40	3,547
Requests via Internet—Individuals (minus Denmark, Netherlands, Norway, & Sweden)	7,979	1	40	5,319
Requests via Letter—Individuals in Denmark, Netherlands, Norway, & Sweden	280	1	44	205
Requests via Internet—Individuals in Denmark, Netherlands, Norway, & Sweden	421	1	44	309
Requests via Letter—Employers (minus Denmark, Netherlands, Norway, & Sweden)	21,279	1	40	14,186
Requests via Internet—Employers (minus Denmark, Netherlands, Norway, & Sweden)	31,920	1	40	21,280
Requests via Letter—Employers in Denmark, Netherlands, Norway, & Sweden	1,121	1	44	822
Requests via Internet—Employers in Denmark, Netherlands, Norway, & Sweden	1,680	1	44	1232
Totals	70,000	.....	.....	46,900

[17] 17 CFR 200.30–3(a)(12).

2. *Request for Accommodation in Communication Method—45 CFR 85.51—0960–0777.* SSA allows blind or visually impaired Social Security applicants, beneficiaries, recipients, and representative payees to choose one of seven alternative methods of communication they want SSA to use when we send them benefit notices and other related communications. The seven alternative methods we offer are: (1) Standard print notice by first-class mail; (2) standard print mail with a follow-up telephone call; (3) certified mail; (4) Braille; (5) Microsoft Word file on data CD; (6) large print (18-point font); or (7) audio CD. However, respondents who want to receive notices from SSA through a communication method other than the seven methods listed above must explain their request to us. Those respondents use Form SSA–9000 to: (1) Describe the type of accommodation they want, (2) disclose their condition necessitating the need for a different type of accommodation, and (3) explain why none of the seven methods described above are sufficient for their needs. SSA uses Form SSA–9000 to determine, based on applicable law and regulation, whether to grant the respondents' requests for an accommodation based on their blindness, or other visual impairment. SSA collects this information electronically through either an in-person interview or a telephone interview during which the SSA employee keys in the information on Intranet screens. The respondents are blind or visually impaired Social Security applicants, beneficiaries, recipients, and representative payees and who ask SSA to send notices and other communications in an alternative method besides the seven modalities we currently offer.

Type of Request: Revision of an OMB-approved information collection

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–9000	619	1	20	206

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 3, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Request to be Selected as a Payee—20 CFR 404.2010–404.2055, 416.601–416.665—0960–0014.* An individual applying to be a representative payee for a Social Security beneficiary or Supplemental Security Income recipient must first complete Form SSA–11–BK. SSA obtains information from applicant payees regarding their relationship to the beneficiary; personal qualifications; concern for the beneficiary's well-being; and their intended use of benefits if appointed as payee. The respondents are individuals, private sector businesses and institutions, and State and local government institutions and agencies applying to become representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Individuals/Households (90%)				
Representative Payee System (RPS)	1,438,200	1	11	263,670
Paper Version	91,800	1	11	16,830
Total	1,530,000			280,500
Private Sector (9%)				
Representative Payee System (RPS)	149,940	1	11	27,489
Paper Version	3,060	1	11	561
Total	153,000			28,050
State/Local/Tribal Government (1%)				
Representative Payee System (RPS)	16,660	1	11	3054
Paper Version	340	1	11	62
Total	17,000			3,116
Grand Total	1,700,000			311,666

2. *Child Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474.* If individuals applying for title II disability benefits care for their own or their spouse's children under age 3 and have no steady earnings during that time period, they may exclude that period of care from the disability computation period. We call this the child-care dropout exclusion. SSA uses the information from Form SSA–4162 to determine if an individual qualifies for this exclusion. Respondents are applicants for title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–4162	2,000	1	5	167

3. *Beneficiary Recontact Form—20 CFR 404.703, 404.705—0960–0502.* SSA investigates recipients of disability payments to determine their continuing eligibility for payments. Research indicates recipients may fail to report circumstances that affect their eligibility. Two such cases are: (1) When parents receiving disability benefits for their child marry; and (2) the removal of an entitled child from parents' care. SSA uses Form SSA–1588–OCR–SM to ask mothers or fathers about their marital status and children currently in their care to detect overpayments and avoid continuing payment to those no longer entitled. Respondents are recipients of mothers' or fathers' Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–1588–OCR–SM	171,506	1	5	14,292

Dated: May 29, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–13028 Filed 5–31–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8344]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Friday, June 21, 2013, from 3:00 p.m. until 4:00 p.m. Eastern Time. The open session will have a series of subject-specific reports, during which the Commission will accept brief oral comments or questions from the public or media. The purpose of the teleconference meeting is to consider the recommendations of the Commission's National Committee for the Intergovernmental Oceanographic Commission (IOC). The call will also be an opportunity to provide an update on recent and upcoming Commission and UNESCO activities. The public comment period will be limited to approximately 10 minutes in total, with two minutes allowed per speaker.

For more information or to arrange to participate in the conference call, individuals must make arrangements with the Executive Secretariat of the National Commission by June 17.

The National Commission, Washington, DC 20037 may be contacted via email *DCUNESCO@state.gov* or Telephone (202) 663–0026; Fax 202–663–0035. The Web site can be accessed at: *http://www.state.gov/p/io/unesco/.*

Dated: May 28, 2013.

Allison Wright,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2013–13077 Filed 5–31–13; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 8342]

Notice of Public Meeting of the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as ''the Board'') will hold a conference call on Thursday, June 20th at 10:00 am–12:00 pm. The call will be operator assisted and is open to the public.

The meeting will be hosted by the Office of the U.S. Global AIDS Coordinator, and led by Dr. Amy DuBois, who is the Acting Director of the Office of Research and Science, and the Designated Federal Officer for the SAB.

The Board serves the Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues are of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in international discourse regarding an evidence-based HIV response. Topics for the meeting will include an update on PEPFAR-funded combination prevention studies and implementation science awards; recommendations to Ambassador Goosby on lubricant safety, and data management.

The public may call into this conference call at the following number: (800) 260–0702 with Confirmation Number: 293699. To ensure that an adequate number of lines are provided, please pre-register by emailing *PEPFAR_SAB@state.gov.* To view the documents which will be discussed on this call, please visit *http://www.pepfar.gov/sab/index.htm.* If you would like to submit a written public comment, please email your comments to *PEPFAR_SAB@state.gov.* While the call is open to public attendance, the Board will determine procedures for public participation.

For further information about the meeting, please contact Dr. Amy DuBois, Acting Director of the Office of Research and Science, Office of the U.S. Global AIDS Coordinator at (202) 663–2706 or *duboisa@state.gov.*

Dated: May 20, 2013.

Amy Dubois,

Acting Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2013–13075 Filed 5–31–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee

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

ACTION: Notice of RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee.

DATES: The meeting will be held June 19, 2013, from 8:30 a.m.–1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Program Management Committee meeting. The agenda will include the following:

June 19, 2013

- Welcome and Introductions.
- Review/Approve Meeting Summary.
- March 20, 2013, RTCA Paper No. 096–13/PMC–1083.
- Publication Consideration/ Approval
- Final Draft, Revised DO–236B, *Minimum Aviation System Performance Standards (MASPS) for Required Navigation Performance for Area Navigation,* RTCA Paper No. 094–13/ PMC–1081, prepared by SC–227.
- Final Draft, New Document, *Operational and Functional Requirements and Safety Objectives for Unmanned Aircraft System Standards,* RTCA Paper No. 102–13/PMC–1084, prepared by SC–203.
- Integration and Coordination Committee (ICC)—Report
- Inter-Special Committee Requirements Agreement (ISRA) Guidance—Process Review and Recommendations.
- Action Item Review
- SC–228—Minimum Performance Standards for Unmanned Aircraft Systems and PMC UAS Steering Committee—Discussion—Status.
- Discussion
- SC–186—Automatic Dependent Surveillance—Broadcast—Discussion—Revised Terms of Reference.
- SC–213—Enhanced Flight & Synthetic Vision Systems—Discussion—Revised Terms of Reference.
- SC–214—Standards for Air Traffic Data Communications Services—Discussion—Revised Terms of Reference.
- SC–216—Aeronautical Systems Security—Discussion—Revised Terms of Reference.
- SC–225—Rechargeable Lithium Batteries—Discussion—Revised Terms of Reference.
- SC–227—Standards of Navigation Performance—Discussion—Revised Terms of Reference.
- Presentation—Part 23 ARC Report—Areas/Recommendations for RTCA Support—Discussion.
- NAC—Status Update.
- FAA Actions Taken on Previously Published Documents—Report.
- Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review.
- European/EUROCAE Coordination—Status Update.
- Other Business.
- Schedule for Committee Deliverables and Next Meeting Date.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 23, 2013

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–13019 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Special Committee 223, Airport Surface Wireless Communications

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

ACTION: Meeting Notice of RTCA Special Committee 223, Airport Surface Wireless Communications.

SUMMARY: The FAA is issuing this notice to advise the public of the meeting of the RTCA Special Committee 223, Airport Surface Wireless Communications.

DATES: The meeting will be held June 26–28, 2013, from 9:00 a.m.–5:00 p.m. daily.

ADDRESSES: The meeting will be held at Booz, Allen, Hamilton Offices, 1201 Maryland Avenue SW., Suite 5140, Washington, DC 20036 (*Across from the Portals Building*) on June 26th and RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington DC 20036 on June 27–28.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 223. The agenda will include the following:

Wednesday, June 26, 2013 (Plenary at Booz Allen Facilities)

- Welcome, Introductions, Administrative Remarks.
- Agenda Overview.
- Review and Approve prior Plenary Meeting Summary and Action Item Status.
- General Presentations of Interest.
- MOPS: Review and Disposition of Comments.

Thursday, June 27, 2013 (Plenary at RTCA Facilities)

- MOPS: Review and Disposition of Comments.

Friday, June 28, 2013 (Plenary at RTCA Facilities)

- Profiles: Review CCB actions and Dispositions.
- Review/Approval of Document—*Minimum Operational Performance Standards (MOPS) for the Aeronautical Mobile Airport Communication System (AeroMACS)* and Profiles for Publication.
- Review letter regarding WiMAX Forum Reference Resolution.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–13017 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2013–0392; Notice No.]

RIN 2120–AJ61

Notice of Proposal Policy for Distribution of FAA Data and Information; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice for Data and Information Policy; Extension of comment period.

SUMMARY: This action extends the comment period set out in the notice concerning data and information policy that was published on May 1, 2013. In that document, the FAA proposed its data and information distribution policy and sought comment. This extension is a result of formal requests from the public to extend the comment period to the proposal. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed policy.

DATES: Comments must be received on or before July 28, 2013.

ADDRESSES: You may send comments identified by Docket No. FAA–2013–0392 using any of the following methods:

- *Mail:* send comments by mail to Docket Operations, U.S. Department of Transportation, M–30, room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- *Hand Deliver:* Deliver comments to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue SE., Washington DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- *Facsimile:* Fax comments to the docket operations personnel at 202–493–2251.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mojdeh Supola at (202) 385–8022 or by electronic mail at *mojdeh.supola@faa.gov.*

Background

On May 1, 2013, the FAA issued Notice of Proposed Policy for distribution of FAA data and information (78 FR 25521). Comments to that document were to be received on or before May 31, 2013.

By emails dated on or about May 20, 2013, three associations and two companies representing a large cross-section of the aviation industry requested that the FAA extend the comment period for 30 or 60 days (Saab Sensis Corporation, Aircraft Owners and Pilots Association, Harris corporation, Airline For America, and Regional Airline Association). The petitioners stated that good cause and need for an extended comment period arises from the scope and extent of the proposed policy, coupled with the effects it could have between and among individual companies and individuals represented by the petitioners.

The FAA agrees with the petitioners' request for an extension of the comment period. We recognize the policy contents are significant and complex. Further, we understand that it is the intention of the petitioners to continue to canvass their members and/or business partners for comments, and to coordinate and consolidate the additional comments.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the joint petition made by the three associations and the two companies for extension of the comment period for this notice. These petitioners have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for this notice is extended to July 28, 2013.

Issued in Washington, DC, on May 28, 2013.

Harold Davis,

Director, Office of ATO Data Management.

[FR Doc. 2013–13086 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2013–04]

Importance of Clear Safety Procedures for Temporary Removal From Service of Highway-Rail Grade Crossing Warning Systems and Wayside Signal Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing this Safety Advisory 2013–04 to reemphasize the importance of clear and precise railroad safety procedures to ensure the safety of the traveling public and railroad employees when highway-rail grade crossing warning systems and wayside signal systems are temporarily removed from service for purposes of testing, inspection, maintenance, or repair. FRA previously made related recommendations to railroads regarding the importance of clear safety procedures to ensure the safety of highway-rail grade crossing warning systems and wayside signal systems in Safety Advisory 2002–01.

FOR FURTHER INFORMATION CONTACT: George Hartman, Staff Director, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (phone: 202–493–6225, email: *George.Hartman@dot.gov*), or Kathryn Shelton, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (phone: 202–493–6063, email: *Kathryn.Shelton@dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

Highway-rail grade crossing warning devices and wayside train signals are among the most important safety systems in the railroad industry for preventing train collisions and highway-rail grade crossing accidents. Despite the high degree of reliability of these

systems, failures occasionally do occur. FRA regulations (Title 49 Code of Federal Regulations (CFR) parts 234 and 236) require that grade crossing warning devices and wayside signals operate on the ''fail safe'' or ''closed circuit'' principle, which causes a system to revert to its safest state in the event of a failure or malfunction of a vital component of the system. In practical terms, fail-safe operations mean the grade crossing warning devices will activate to stop traffic or a wayside signal will stop train movement in the event of a component failure. However, under certain circumstances, particularly where human error is involved, the fail-safe features can be deactivated or circumvented, creating the potential for an accident. FRA has found that serious highway-rail grade crossing accidents and false proceed signal failures have occurred due to human error.

FRA acknowledges that the railroad industry has long recognized the importance of having well-defined safety procedures in place to ensure safety when highway-rail grade crossing warning systems and wayside signal systems have been temporarily removed from service for purposes of testing, inspection, maintenance, or repair. Most railroads have had such safety procedures in place for many years. In 2002, FRA published a safety advisory about the importance of having clear safety procedures for the temporary removal of highway-rail grade crossing systems and wayside signal systems from service. Safety Advisory 2002–01 [1] was issued in response to a series of grade crossing accidents that also involved the failure of railroad personnel to follow appropriate safety procedures for the temporary removal of highway-rail grade crossing warning systems from service. Nevertheless, FRA remains concerned that grade crossing accidents and false proceed signal failures continue to occur. Thus, FRA believes it is necessary to reemphasize to the railroad industry the importance of reviewing and re-evaluating their existing safety procedures related to these events.

Over the past year, two serious incidents have resulted from the failure of railroad personnel to follow appropriate safety procedures when removing grade crossing warning devices and wayside signal systems from service for repair. A brief review of these incidents may help illustrate the critical importance of railroads having clear and precise safety procedures in place when testing, inspecting, maintaining, or repairing highway-rail grade crossing warning systems and wayside signal systems.[2]

One incident involved a fatal collision between a southbound passenger train and an automobile that was eastbound at a highway-rail grade crossing. At the time of the collision, two railroad signal employees were working on the grade crossing warning system. The warning system had been removed from service and did not activate as the train approached the crossing. The train was equipped with a forward-facing video camera that recorded (1) that the gate arms were in the upright position, and (2) that the grade crossing warning lights were deactivated as the train traveled through the highway-rail grade crossing and struck the automobile. The automobile driver was fatally injured as a result of the collision.

The second incident involved the derailment of a passenger train that had entered a yard track from the main track. Locomotive video- and event-recorder data show that the passenger train was proceeding on a clear signal through a power-operated switch that had been aligned in the reverse position toward the yard. After traveling at a speed of 61 mph through a turnout that was limited to 15 mph for movement onto a 5 mph yard track, the passenger train derailed about 254 feet beyond the power-operated switch. Four cars and two locomotives derailed upright and emergency responders reported that 14 persons were injured, 8 of whom were transported to area hospitals.

Preliminary information indicates that a signal employee was performing troubleshooting activities with jumper wires inside the signal bungalow just before the derailment. The signal employee was applying a jumper wire to energize the circuit that verified the position of a power-operated switch. This circumvented the signal system's ability to verify that the power-operated switch was aligned and locked in the correct position for the displayed signal aspect.

Both of the occurrences discussed above resulted from interference with the normal functioning of the systems without measures being taken to provide for the safety of highway traffic and train operations that depend on the normal functioning of such systems. FRA is very concerned about these recent incidents and believes that issuance of this safety advisory is necessary in order to once again draw the attention of the railroad industry to this issue with the intent to reduce the likelihood of similar incidents occurring in the future.

Failure to provide for the safety of highway traffic and train operations during all periods while the normal functioning of a system is interfered with is a violation of Federal rail safety regulations (see 49 CFR 234.209 and 236.4). FRA believes these requirements are vital to ensuring the safety of railroad employees, highway users, and the general public. Accordingly, when a system is completely or partially deactivated without adequate protective measures being taken, FRA will take firm enforcement action, which could include civil penalties against the companies or individuals responsible or both. However, preventing such serious failures in the first place is our primary goal and the consistent application of proper procedures is critical to achieving that goal.

Railroads need to have clear and precise procedures for temporarily removing grade crossing warning devices and wayside signal systems from service when performing repairs, tests, inspections, or maintenance. These procedures need to address the use of jumper wires, where applicable, and should also help ensure that grade crossing warning devices and wayside signal systems are properly tested and known to be in proper working order before they are restored to service. Most railroads already have such procedures in place; however, in light of the incidents noted above, FRA believes that railroads should review existing procedures to ensure that they are adequate and should take steps to ensure that these safety procedures are followed.

Use of Jumper Wires

There are situations where it may be necessary to temporarily circumvent the normal functioning of a grade crossing warning or wayside signal system. These situations include testing, inspection, maintenance, and repair of grade crossing warning systems or wayside signal systems, maintenance-of-way activity, and trains standing within a warning system's approach circuit for extended periods. A common method of circumventing the normal functioning of a grade crossing warning or wayside signal system is the application of jumper wires, which is appropriate when done in a safe manner.

In situations involving grade crossing warning systems, it is critical that the system's credibility be maintained. For example, if maintenance-of-way work is being performed on trackage that is part

[1] 67 FR 3258 (Jan. 23, 2002).

[2] Additional information pertaining to these incidents can be obtained from National Transportation Safety Board Safety Recommendations R–13–3 and –4.

of a highway-rail grade crossing warning system's train detection circuit without the application of jumper wires, it is highly probable that the warning system will activate. This indicates to motorists that it is not safe to cross the railroad tracks when, in fact, no train is approaching the crossing. The integrity of the warning system would be compromised by the conveyance of false information to motorists, such that in the future, they would not necessarily comply with the warning system indications. Appropriate use of jumper wires or other safe means of circumventing the normal functioning of the system thus prevents the incorrect warning from being displayed to motorists. Safety is also maintained as long as measures are taken to provide for the safety of motorists and train operations.

Temporary removal from service of grade crossing warning devices and wayside signal systems—through the application of jumpers or other means—is a safe practice, when combined with protective measures for highway traffic and train operations. FRA has reviewed some of the safety procedures for disabling grade crossing warning devices and wayside signal systems that are in place on the major railroads to determine ''best practices'' that have been developed in the industry. We found that the most effective safety procedures include the following items: (1) Requirements for signal employees to obtain proper authority from the train dispatcher or other appropriate personnel responsible for the movement of trains through the territory before disabling a grade crossing warning or wayside signal system; (2) documentation of the authority to disable the grade crossing warning or wayside signal system; (3) a requirement that all disabled grade crossing warning and wayside signal systems must be properly inspected and tested to ensure proper operation before being restored to service; and (4) a procedure for signal employees to verify with the train dispatcher or other appropriate personnel responsible for the movement of trains through the territory that the grade crossing warning system or wayside signal system has been properly tested before being restored to service.

To mitigate the risks inherent with circumventing the normal functioning of a system, FRA believes it is important that individual railroads have standard procedures in place before interfering with the normal operation of a grade crossing warning or wayside signal system.

Recommended Actions

In recognition of the need to ensure safety, FRA strongly recommends that:

1. Each railroad responsible for the proper operation of a highway-rail grade crossing warning system or wayside signal system review and evaluate its specific railroadwide instructions for the proper method for temporary removal of these systems from service. These instructions should address the following items:

a. The manner in which the deactivation is authorized.

b. The personnel designated to authorize deactivation.

c. The protocols for notifying appropriate persons, especially personnel responsible for the movement of trains, that a grade crossing warning system or wayside signal system has been temporarily removed from service.

d. The appropriate methods of providing for the safety of train movements while the grade crossing warning system or wayside signal system is temporarily removed from service.

e. The requirements necessary to perform an inspection and operational test of the pertinent system components before restoring the grade crossing warning system or wayside signal system to service.

f. The protocols for documenting and notifying appropriate persons that the grade crossing warning system or wayside signal system has been properly tested and restored to service.

2. Each railroad provide regular periodic training to all affected employees to ensure their understanding of instructions for the proper procedures for the temporary removal from service of grade crossing warning or wayside signal systems, including the proper use of jumper wires.

FRA encourages railroad industry members to take actions that are consistent with the preceding recommendations, and to take other complementary actions to help ensure the safety of the Nation's railroad employees. FRA may modify this Safety Advisory 2013–04, issue additional safety advisories, or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on May 28, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–13047 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad 2013 0065]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Bill Kurfehs, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2318 or Email: *bill.kurfehs.@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for by the participant, their size and flags of registry and other pertinent information. There is a recommended format for this information included as part of the application.

Need and Use of the Information: The collection of information is necessary to evaluate tanker capability and make plans for use of this capability to meet national emergency requirements. This information will be used by both

MARAD and Department of Defense to establish overall contingency plans.

Description of Respondents: Tanker companies that operate in international trade and who have agreed to participate in this agreement.

Annual Responses: 15 responses.

Annual Burden: 15 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST*), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.93.

By Order of the Maritime Administrator.

Dated: May 20, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–13054 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0062]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ARRIVE DERCI; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0062. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ARRIVE DERCI is:

Intended Commercial Use of Vessel: ''Harbor Cruises/Burials at sea''.

Geographic Region: ''California, Oregon, Washington''.

The complete application is given in DOT docket MARAD–2013–0062 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 23, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–13051 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0064]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CATTITUDE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0064. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except

Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CATTITUDE is:

Intended Commercial Use of Vessel: ''Passenger vessel for coastwise trade, six or fewer passengers.''

Geographic Region: ''New Jersey, Maryland, Delaware, Florida.''

The complete application is given in DOT docket MARAD–2013–0064 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 23, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–13041 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0063]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BLACK ICE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0063. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLACK ICE is:

Intended Commercial Use Of Vessel: Small passenger sails. Sightseeing, dinner sails, sailing classes, and eco sails.

Geographic Region: ''Texas, Louisiana, Mississippi, Alabama, Florida, and Georgia''.

The complete application is given in DOT docket MARAD–2013–0063 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 23, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–13042 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0038; Notice 1]

RECARO Child Safety, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: RECARO Child Safety, LLC (RECARO) [1] has determined that certain RECARO brand ProSport child restraint systems produced between June 16, 2010 and January 31, 2013, do not fully comply with paragraph S6.1.2(a)(1)(i)(D) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* RECARO has filed an appropriate report dated February 6,

[1] RECARO Child Safety, LLC is a manufacturer of motor vehicle equipment and is registered under the laws of the state of Michigan.

2013, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), RECARO submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of RECARO's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Equipment Involved: Affected are approximately 39,181 RECARO brand ProSport child restraint systems produced between June 16, 2010 and January 31, 2013.

Summary of Recaro's Analysis and Arguments: RECARO explains that the noncompliance is that the RECARO ProSport child restraint system does not comply with the head excursion requirements of FMVSS 213 S5.1.3.1(a)(1) when subjected to the dynamic test requirements of FMVSS No. 213 S6.1.2(a)(1)(i)(D), using a six year old test dummy secured to the test bench by lower anchors and no tether.

In support of this Petition, RECARO submits the following comments and data:

1. The dynamic test requirements of FMVSS No. 213 S6.1.2(a)(1)(i)(D) require using a six year old test dummy secured to the test bench using lower anchors and no tether. This test procedure is a direct violation of the instructions and warnings in the instruction manual included with each ProSport child restraint system and would constitute a major misuse of the child restraint by the consumer. (RECARO provided the entire manual as part of its petition.)

2. RECARO has received over 9,000 registration cards returned by purchasers of the ProSport. Using the on-line survey system Survey Monkey, RECARO instituted a survey of 3,690 registered owners by emailing each purchaser the following survey questions:

a. Are you currently using your ProSport child restraint?

b. How is (was) your ProSport installed in the vehicle?

i. Vehicle lap/shoulder belt

ii. Lower anchors provided with child restraint (LATCH)

c. Did you use the top tether included on the ProSport to install the child restraint into the vehicle?

929 registered owners responded to the survey by confirming that they installed the child restraint with lower LATCH anchors. Of those responding, 837 or 90.1% confirmed that the top tether was being used to install their ProSport when installing the child restraint with lower LATCH anchors. (RECARO included a copy of the survey details and results as part of its petition.) RECARO stated its belief that the survey is a statistically significant confirmation that a very small percentage of ProSport consumers are misusing the child restraint by not using the top tether when installing the child restraint with lower LATCH anchors and that the effectiveness of any noncompliance notification campaign will be minimal, given the historically low response rate to technical noncompliance notification campaigns of child restraints. For example, the survey results indicate that only those ProSport consumers not properly using the top tether when installing the child restraint with lower LATCH anchors are likely to respond to a noncompliance notification. Assuming a response rate of 10% by this group, only 400 of the estimated 4,000 consumers misusing the child restraint are likely to respond. This statistically insignificant response renders the technical noncompliance at issue inconsequential.

3. All vehicles equipped with lower child restraint (LATCH) anchors are also equipped with top tether anchors. RECARO has received 82 consumer calls regarding the ProSport. (RECARO included copies of consumer call reports as part of its petition.) No consumer has questioned the use of the tether when securing the ProSport with the lower anchors. RECARO has no information of this misuse actually occurring in the field or of any injuries sustained by a child when restrained in a ProSport in this misuse condition.

4. RECARO has received notice of three accidents involving four children seated in ProSport child restraint systems. In these incidents, the ProSport performed well and the occupant was not injured. It is not known if the ProSports involved were installed using the lower LATCH anchors or, if so, whether the top tethers were used.

5. RECARO has implemented an engineering/structural modification to the ProSport. Dynamic tests of the modified ProSport using a Hybrid II six year old test dummy secured to the test bench using lower anchors and no tether confirm that the head excursion requirements of FMVSS No. 213 S5.1.3.1(a)(1) are met. (RECARO included copies of the test reports as part of its petition.)

6. RECARO stated its belief that the ProSport outperforms any comparable child restraint with regards to head excursions when installed with the lap/shoulder belt.

7. Given the relative small number of ProSport child restraints distributed since introduction in June 2010 (39,181), the effectiveness of any notification campaign regarding this technical noncompliance will be limited. Additionally, any noncompliance notice campaign may result in consumers deciding to discontinue using their ProSport for a period of time, increasing the risk of injury to a higher degree than the risk resulting from the small number of consumers misusing the child restraint by not using the top tether when installing the child restraint with lower LATCH anchors.

RECARO has additionally informed NHTSA that it has stopped production of the ProSport at the end of January 2013.

In summation, RECARO believes that the described noncompliance of its equipment is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are

provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 39,181 [2] child restraint systems that RECARO no longer controlled at the time it determined that the noncompliance existed.

Comment Closing Date: July 3, 2013.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Issued On: May 21, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–13099 Filed 5–31–13; 8:45 am]

BILLING CODE 4910–59–P

[2] RECARO's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt RECARO as a motor vehicle equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the affected motor vehicle equipment. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicle equipment under their control after RECARO notified them that the subject noncompliance existed.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review: Disclosure and Reporting of CRA-Related Agreements

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''Disclosure and Reporting of CRA-Related Agreements.'' The OCC also gives notice that it has sent the collection to OMB for review.

DATES: Comments must be received by July 3, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0219, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0219, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Five CFR 1320.5(a)(1)(iv) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend, without change, OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA-Related Agreements (12 CFR Parts 35 and 133).

OMB Control No.: 1557–0219.

Type of Review: Extension of a currently approved collection.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

National banks, Federal savings associations and their affiliates (institutions) occasionally enter into agreements with nongovernmental

entities or persons (NGEPs) through their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements, and imposes reporting requirements on institutions and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve Board issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the PRA. The regulations issued by the OCC are codified at 12 CFR parts 35 and 133; the collections of information contained in that regulation are known as ''CRA Sunshine.''

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and an NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8; 12 U.S.C. 1831y(a)–(c).

The information collections are found in 12 CFR 35.4(b); 35.6(b)–(d); 35.7(b) and (f); 133.4(b); 133.6(b)–(d); and 133.7(b) and (f).

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 388.

Estimated Total Annual Burden: 800.

Comment: The OCC published a 60-day notice in the **Federal Register**. 78 FR 16361 (March 14, 2013). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 28, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–12974 Filed 5–31–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review: Notice Regarding Unauthorized Access to Customer Information

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and Request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''Notice Regarding Unauthorized Access to Customer Information.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before July 3, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0227, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0227, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You may request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Five CFR 1320.5(a)(1)(iv) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend, with revision, the approval of the following information collection:

Title: Notice Regarding Unauthorized Access to Customer Information.

OMB Control No.: 1557–0227.

Type of Review: Extension of a currently approved collection.

Description: Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801) requires the OCC to establish appropriate standards for national banks relating to administrative, technical, and physical safeguards: (1) To insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to, or use of, such records or information that could result in substantial harm or inconvenience to any customer.

The Interagency Guidelines Establishing Information Security Standards, 12 CFR Part 30, Appendix B and Part 170, Appendix B (collectively, Security Guidelines), implementing section 501(b), require each entity supervised by the OCC (supervised institution) to consider and adopt a response program, if appropriate, that specifies actions to be taken when the supervised institution suspects or detects that unauthorized individuals have gained access to customer information.

The Interagency Guidance on Response Programs for Unauthorized Customer Information and Customer Notice (Breach Notice Guidance [1]), which interprets the Security Guidelines, states that, at a minimum, a supervised institution's response program should contain procedures for the following:

(1) Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

(2) Notifying its primary Federal regulator as soon as possible when the supervised institution becomes aware of an incident involving unauthorized access to, or use of, sensitive customer information;

(3) Consistent with the OCC's Suspicious Activity Report regulations, notifying appropriate law enforcement authorities and filing a timely SAR in situations in which Federal criminal violations require immediate attention, such as when a reportable violation is ongoing;

(4) Taking appropriate steps to contain and control the incident in an effort to prevent further unauthorized access to, or use of, customer information (for example, by monitoring, freezing, or closing affected accounts) while preserving records and other evidence; and

(5) Notifying customers when warranted.

This collection of information covers the notice provisions in the Breach Notice Guidance.

Affected Public: Individuals; businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 344.

Estimated Number of Responses: 344.

Estimated Annual Burden: 12,384 hours.

Frequency of Response: On occasion.

Comment: The OCC published a 60-day notice in the **Federal Register**. 78 FR 15121 (March 8, 2013). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and

(f) Whether the estimates need to be adjusted based upon banks' experiences regarding the number of actual security breaches that occur.

Dated: May 28, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–12973 Filed 5–31–13; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 CFR Part 30, Appendix B, Supplement A.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2014 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the *2014 Grant Application Package and Guidelines* (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2014 grant year, which runs from January 1, 2014, through December 31, 2014. The application period runs from May 28, 2013, through July 12, 2013.

The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526, for matching grants. A qualifying organization may receive a matching grant of up to $100,000 per year for up to a three-year project period. Qualifying organizations that provide representation for free or for a nominal fee to low income taxpayers involved in tax disputes with the IRS, or educate individuals for whom English is a second language of their taxpayer rights and responsibilities, or both, can apply for a grant.

Examples of qualifying organizations include: (1) A clinical program at an accredited law, business or accounting school whose students represent low income taxpayers in tax controversies with the IRS, (2) an organization exempt from tax under I.R.C. § 501(a) that represents low income taxpayers in tax controversies with the IRS or refers those taxpayers to qualified representatives, and (3) an organization exempt from tax under I.R.C. § 501(a) that operates programs to inform individuals for whom English is a second language about their rights and responsibilities as taxpayers.

DATES: The IRS is authorized to award a multi-year grant not to exceed three years. For a new clinic or a clinic applying for the first year of a three-year grant, the clinic must submit the application electronically at *www.grants.gov*.er of TREAS–GRANTS–052014–001. For an existing clinic requesting funding for the second or third year of a multi-year grant, the clinic must submit the application electronically at *www.grantsolutions.gov*. All applicants

must use the funding number of TREAS–GRANTS–052014–001 and grant applications for the 2014 grant year must be electronically filed by July 12, 2013.

ADDRESSES: The LITC Program Office is located at: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA:LITC, 1111 Constitution Avenue NW., Room 1034, Washington, DC 20224. Copies of the *2014 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 5–2013), can be downloaded from the IRS Internet site at *www.irs.gov/advocate* or ordered by calling the IRS Distribution Center at 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at (202) 622–4711 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS or inform individuals for whom English is a second language of their taxpayer rights and responsibilities, or both. The IRS may award grants to qualifying organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant cycle.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system by educating low income taxpayers about their rights and responsibilities, by providing *pro bono* representation to taxpayers in tax disputes with the IRS, by conducting outreach and education to taxpayers who speak English as a second language, and by identifying and advocating for issues that impact low income taxpayers.

Selection Consideration

Applications that pass the eligibility screening process will undergo a two-tier evaluation process. Applications will be subject to both a technical evaluation and a program office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 2013–12999 Filed 5–31–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Monday,
No. 106 June 3, 2013

Part II

Department of the Treasury

Internal Revenue Service
26 CFR Part 54

Department of Labor

Employee Benefits Security Administration
29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 146 and 147

Incentives for Nondiscriminatory Wellness Programs in Group Health Plans; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9620]

RIN 1545–BL07

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB55

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 146 and 147

[CMS–9979–F]

RIN 0938–AR48

Incentives for Nondiscriminatory Wellness Programs in Group Health Plans

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This document contains final regulations, consistent with the Affordable Care Act, regarding nondiscriminatory wellness programs in group health coverage. Specifically, these final regulations increase the maximum permissible reward under a health-contingent wellness program offered in connection with a group health plan (and any related health insurance coverage) from 20 percent to 30 percent of the cost of coverage. The final regulations further increase the maximum permissible reward to 50 percent for wellness programs designed to prevent or reduce tobacco use. These regulations also include other clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives they must offer in order to avoid prohibited discrimination.

DATES: *Effective Date:* August 2, 2013.

Applicability Date: These final regulations generally apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2014. These final regulations generally apply to individual health insurance issuers for policy years beginning on or after January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 927–9639; or Jacob Ackerman, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cciio.cms.gov*) and information on health reform can be found at *www.HealthCare.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Patient Protection and Affordable Care Act, Pub. L. 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L. 111–152, was enacted on March 30, 2010 (these are collectively known as the ''Affordable Care Act''). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

B. Wellness Exception to HIPAA Nondiscrimination Provisions

Prior to the enactment of the Affordable Care Act, titles I and IV of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, added section 9802 of the Code, section 702 of ERISA, and section 2702 of the PHS Act (HIPAA nondiscrimination and wellness provisions). These provisions generally prohibit group health plans and group health insurance issuers from discriminating against individual participants and beneficiaries in eligibility, benefits, or premiums based on a health factor.[2] An exception to the general rule allows premium discounts or rebates or modification to otherwise applicable cost sharing (including copayments, deductibles, or coinsurance) in return for adherence to certain programs of health promotion and disease prevention.

The Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments[3]) published joint final regulations implementing the HIPAA nondiscrimination and wellness provisions on December 13, 2006 at 71 FR 75014 (the 2006 regulations).[4] The 2006 regulations divided wellness programs into two general categories: Participatory wellness programs and health-contingent wellness programs. Under the 2006 regulations, participatory wellness programs[5] are considered to comply with the HIPAA nondiscrimination requirements

[1] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

[2] The HIPAA nondiscrimination provisions set forth eight health status-related factors, which the December 13, 2006 final regulations refer to as ''health factors.'' Under HIPAA and the 2006 regulations, as well as under PHS Act section 2705 (as added by the Affordable Care Act), the eight health factors are health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability. *See* 66 FR 1379, January 8, 2001.

[3] Note, however, that in the Economic Analysis and Paperwork Burden section of this preamble, in sections under headings listing only two of the three Departments, the term ''Departments'' generally refers only to the two Departments listed in the heading.

[4] *See* 26 CFR 54.9802–1; 29 CFR 2590.702; 45 CFR 146.121. Prior to issuance of the final 2006 regulations, the Departments published interim final regulations with request for comment implementing the HIPAA nondiscrimination provisions on April 8, 1997 at 62 FR 16894, followed by proposed regulations regarding wellness programs on January 8, 2001 at 66 FR 1421.

[5] Under the 2006 regulations, a participatory wellness program is generally a program under which none of the conditions for obtaining a reward is based on an individual satisfying a standard related to a health factor or under which no reward is offered.

without having to satisfy any additional standards if participation in the program is made available to all similarly situated individuals, regardless of health status. Paragraph (d) of the 2006 regulations provided that, generally, distinctions among groups of similarly situated participants in a health plan must be based on bona fide employment-based classifications consistent with the employer's usual business practice. A plan may also distinguish between beneficiaries based on, for example, their relationship to the plan participant (such as spouse or dependent child) or based on the age of dependent children. Distinctions are not permitted to be based on any of the health factors listed in the 2006 regulations.

Under the 2006 regulations, plans and issuers with health-contingent wellness programs [6] were permitted to vary benefits (including cost-sharing mechanisms), premiums, or contributions based on whether an individual has met the standards of a wellness program that meets the requirements of paragraph (f)(2), which outlined five specific criteria.

C. Amendments Made by the Affordable Care Act

The Affordable Care Act (section 1201) amended the HIPAA nondiscrimination and wellness provisions of the PHS Act (but not of ERISA section 702 or Code section 9802). (Affordable Care Act section 1201 also moved those provisions from PHS Act section 2702 to PHS Act section 2705.) As amended by the Affordable Care Act, the nondiscrimination and wellness provisions of PHS Act section 2705 largely reflect the 2006 regulations (except as discussed later in this preamble), and extend the HIPAA nondiscrimination protections to the individual market.[7] The wellness program exception to the prohibition on discrimination under PHS Act section 2705 applies with respect to group health plans (and any health insurance coverage offered in connection with such plans), but does not apply to coverage in the individual market.

D. Proposed Regulations Implementing PHS Act Section 2705 and Amending the 2006 Regulations

On November 26, 2012, the Departments published proposed regulations at 77 FR 70620, to implement PHS Act section 2705 and amend the 2006 regulations regarding nondiscriminatory wellness programs in group health coverage. Like the 2006 regulations, the proposed regulations continued to divide wellness programs into participatory wellness programs and health-contingent wellness programs. Examples of participatory wellness programs provided in the proposed regulations included a program that reimburses for all or part of the cost of membership in a fitness center; a diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes; and a program that provides a reward to employees for attending a monthly, no-cost health education seminar. Examples of health-contingent wellness programs in the proposed regulations included a program that imposes a premium surcharge based on tobacco use; and a program that uses a biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as high cholesterol, high blood pressure, abnormal body mass index, or high glucose level) and provides a reward to employees identified as within a normal or healthy range (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward.

The proposed regulations re-stated that participatory wellness programs are not required to meet the five requirements applicable to health-contingent wellness programs. The proposed regulations also outlined the conditions for health-contingent wellness programs, as follows:

1. The program must give eligible individuals an opportunity to qualify for the reward at least once per year.

2. The reward for a health-contingent wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed 30 percent of the total cost of employee-only coverage under the plan, or 50 percent to the extent the program is designed to prevent or reduce tobacco use.

3. The reward must be available to all similarly situated individuals. For this purpose, a reasonable alternative standard (or waiver of the otherwise applicable standard) must be made available to any individual for whom, during that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard (or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard).

4. The program must be reasonably designed to promote health or prevent disease. For this purpose, it must have a reasonable chance of improving the health of, or preventing disease in, participating individuals, and not be overly burdensome, not be a subterfuge for discriminating based on a health factor, and not be highly suspect in the method chosen to promote health or prevent disease. The proposed regulations also stated that, to the extent a plan's initial standard for obtaining a reward (or a portion of a reward) is based on results of a measurement, test, or screening that is related to a health factor (such as a biometric examination or a health risk assessment), the plan is not reasonably designed unless it makes available to all individuals who do not meet the standard based on the measurement, test, or screening, a different, reasonable means of qualifying for the reward.

5. The plan must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard.

II. Overview of the Final Regulations

A. General Overview

The Departments believe that appropriately designed wellness programs have the potential to contribute importantly to promoting health and preventing disease. After consideration of all the comments, the Departments are issuing these final regulations to provide comprehensive guidance with respect to the general requirements for wellness programs. At the same time, the Departments recognize that each wellness program is unique and questions may remain regarding the application of these requirements. The Departments anticipate issuing future subregulatory guidance to provide additional clarity and potentially proposing modifications to this final rule as necessary. These final regulations generally implement standards for group health plans and health insurance issuers offering group health insurance coverage with respect

[6] Under the 2006 regulations, a health-contingent wellness program is generally a program under which any of the conditions for obtaining a reward is based on an individual satisfying a standard related to a health factor (such as not smoking, attaining certain results on biometric screenings, or meeting targets for exercise).

[7] Section 1201 of the Affordable Care Act also moved the guaranteed availability provisions that were previously codified in PHS Act section 2711 to PHS Act section 2702, and extended those requirements to the individual market.

to the wellness program exception from the HIPAA nondiscrimination provisions in PHS Act section 2705, ERISA section 702, and Code section 9802, as amended by the Affordable Care Act. These final regulations replace the wellness program provisions of paragraph (f) of the 2006 regulations and are applicable to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after January 1, 2014.[8] These regulations also implement the nondiscrimination provisions of PHS Act section 2705 applicable to non-grandfathered individual health insurance coverage for policy years beginning on or after January 1, 2014. This rulemaking does not modify provisions of the 2006 regulations other than paragraph (f).

Stakeholder feedback suggested that there is some degree of confusion regarding the scope of the HIPAA and Affordable Care Act rules governing wellness programs, which is clarified in these final regulations. Specifically, these final regulations do not establish requirements for all types of programs or information technology platforms offered by an employer, health plan, or health insurance issuer that could be labeled a wellness program, disease management program, case management program, or similar term. Instead, these final regulations set forth criteria for a program of health promotion or disease prevention offered or provided by a group health plan or group health insurance issuer that must be satisfied in order for the plan or issuer to qualify for an exception to the prohibition on discrimination based on health status under paragraphs (b)(2)(ii) and (c)(3) of the 2006 regulations (which provide exceptions to the general prohibition against discrimination based on a health factor in benefits and premiums or contributions, respectively).[9] That is, these rules set forth criteria for an affirmative defense that can be used by plans and issuers in response to a claim that the plan or issuer discriminated under the HIPAA nondiscrimination provisions.

These final regulations are restructured, as compared to the proposed regulations, to help clarify this relationship and how the five statutory requirements apply to different types of programs, including different types of health-contingent wellness programs (described below as activity-only wellness programs and outcome-based wellness programs). The final regulations also reorganize the presentation of the steps a plan or issuer must take to ensure a wellness program: is reasonably designed to promote health or prevent disease; has a reasonable chance of improving the health of, or preventing disease in, participating individuals; is not overly burdensome; is not a subterfuge for discriminating based on a health factor; and is not highly suspect in the method chosen to promote health or prevent disease. To meet these standards, health-contingent wellness programs that are outcome-based wellness programs must offer a ''reasonable alternative standard'' (or waiver of the otherwise applicable standard) to a broader group of individuals than is required for activity-only wellness programs. Specifically, for activity-only wellness programs, a reasonable alternative standard for obtaining the reward must be provided for any individual for whom, for that period, it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. For outcome-based wellness programs, which generally provide rewards based on whether an individual has attained a certain health outcome (such as a particular body mass index (BMI), cholesterol level, or non-smoking status, determined through a biometric screening or health risk assessment), a reasonable alternative standard must be provided to all individuals who do not meet the initial standard, to ensure that the program is reasonably designed to improve health and is not a subterfuge for underwriting or reducing benefits based on health status.[10] These requirements are generally intended to be the same as those included in the proposed rules, but the terminology has changed (for example, the term ''different, reasonable means,'' which was used side by side with the term ''reasonable alternative standard,'' has been dropped to reduce confusion). These changes help to clarify that the group of individuals that must be offered a reasonable alternative standard differs when comparing the requirements for an activity-only wellness program to the requirements for an outcome-based wellness program. The requirements that the alternative be reasonable taking into account an individual's medical condition, and the option of waiving the initial standard, remain the same. The term ''reasonable alternative standard'' is used in these final rules as it is in the statute.[11]

The intention of the Departments in these final regulations is that, regardless of the type of wellness program, every individual participating in the program should be able to receive the full amount of any reward or incentive, regardless of any health factor. The reorganized requirements of the final regulations explain how a plan or issuer is required to provide such an opportunity for each category of wellness program.

B. Definitions

Paragraph (f)(1) provides several definitions that govern for purposes of these final regulations.

Reward. References in these final regulations to an individual obtaining a reward include both obtaining a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism (such as a deductible, copayment, or coinsurance), an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a surcharge or other financial or nonfinancial disincentives). References in the final regulations to a plan providing a reward include both providing a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

Participatory wellness programs. Consistent with the 2006 regulations and PHS Act section 2705(j), these final regulations continue to divide wellness programs into two categories: ''participatory wellness programs,'' which are a majority of wellness programs (as noted below), and ''health-contingent wellness programs.'' Participatory wellness programs are defined under the final regulations as programs that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor. Several examples of participatory wellness programs are provided in these final

[8] *See* section 1251 of the Affordable Care Act and interim final regulations at 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 for the definition of a grandfathered health plan.

[9] 26 CFR 54.9802–1(b)(2)(ii) and (c)(3); 29 CFR 2590.702(b)(2)(ii) and (c)(3); and 45 CFR 146.121(b)(2)(ii) and (c)(3).

[10] *See* 77 FR 70625.

[11] The ''reasonable alternative standard'' is separate and distinct from the standard for ''reasonable accommodations'' under the Americans with Disabilities Act of 1990 (ADA) and related laws, regulations and guidance. *See* section II.H later in this preamble for a discussion of how compliance with the nondiscrimination rules (including the wellness program provisions) is not determinative of compliance with any other law.

regulations, including: (1) A program that reimburses employees for all or part of the cost of membership in a fitness center; (2) a diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes; and (3) a program that provides a reward to employees for attending a monthly, no-cost health education seminar.

Health-contingent wellness programs. In contrast, health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward (or require an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward). This standard may be performing or completing an activity relating to a health factor, or it may be attaining or maintaining a specific health outcome. In these final regulations, the category of health-contingent wellness programs is subdivided into: (1) Activity-only wellness programs, and (2) outcome-based wellness programs. Under paragraphs (b)(2)(ii) and (c)(3) of the 2006 regulations (which remain unchanged),[12] both of these types of health-contingent wellness programs are permissible only if they comply with the criteria of these final regulations.[13]

Activity-only wellness programs. Activity-only wellness programs are a subcategory of health-contingent wellness programs. Under an activity-only wellness program, an individual is required to perform or complete an activity related to a health factor in order to obtain a reward. Activity-only wellness programs do not require an individual to attain or maintain a specific health outcome. Examples of activity-only wellness programs include walking, diet, or exercise programs. Some individuals participating in an activity-only wellness program may be unable to participate in or complete (or have difficulty participating in or completing) the program's prescribed activity due to a health factor. For example, an individual may be unable to participate in a walking program due to a recent surgery or pregnancy, or may have difficulty participating due to severe asthma. The final regulations, therefore, provide safeguards to ensure these individuals are given a reasonable opportunity to qualify for the reward.

Outcome-based wellness programs. Outcome-based wellness programs are a subcategory of health-contingent wellness programs. Under an outcome-based wellness program, an individual must attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward. Generally, these programs have two tiers: (a) A measurement, test, or screening as part of an initial standard; and (b) a larger program that then targets individuals who do not meet the initial standard with wellness activities. For individuals who do not attain or maintain the specific health outcome, compliance with an educational program or an activity may be offered as an alternative to achieve the same reward. However, this alternative pathway does not mean that the overall program, which has an outcome-based initial standard, is not an outcome-based wellness program. That is, if a measurement, test, or screening is used as part of an initial standard and individuals who meet the standard are granted the reward, the program is considered an outcome-based wellness program. Examples of outcome-based wellness programs include a program that tests individuals for specified medical conditions or risk factors (such as high cholesterol, high blood pressure, abnormal BMI, or high glucose level) and provides a reward to employees identified as within a normal or healthy range (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward.

C. Requirement for Participatory Wellness Programs

Paragraph (f)(2) of these final regulations requires a participatory wellness program to be made available to all similarly situated individuals, regardless of health status. Participatory wellness programs are not required to meet the requirements applicable to health-contingent wellness programs under these final regulations. Some comments requested that the Departments impose additional requirements with respect to participatory wellness programs. Other commenters proposed that the Departments require that plans and issuers take into account an individual's income or other personal circumstances in determining whether a participatory wellness program is available or accessible to all similarly situated individuals.

As discussed earlier, the HIPAA nondiscrimination provisions generally prohibit group health plans and health insurance issuers from discriminating against individual participants and beneficiaries in eligibility, benefits, or premiums based on a health factor. To the extent a plan or issuer establishes a wellness program that does not adjust benefits or premiums based on a health factor, these wellness program provisions are generally not implicated. These final rules make clear that such ''participatory'' wellness programs (in contrast to ''health-contingent wellness programs'') are permissible under the HIPAA nondiscrimination rules, as amended by the Affordable Care Act, provided they are available to all similarly situated individuals regardless of health status.

Availability regardless of health status ensures that the general prohibition against discrimination based on a health factor is not implicated. If factors other than health status (such as scheduling limitations) limit an individual's ability to take part in a program, that does not mean that the plan has violated the general rule prohibiting discrimination based on a health factor because the program was not discriminatory under the HIPAA nondiscrimination rules to begin with. For example, if a plan made available a premium discount in return for attendance at an educational seminar, but only healthy individuals were provided the opportunity to attend, the program would discriminate based on a health factor because only healthy individuals were provided the opportunity to reduce their premiums. However, if all similarly situated individuals were permitted to attend, but a particular individual could not attend because the seminar was held on a weekend day and the individual was unavailable to attend at that time, that does not mean the program discriminated against that individual based on a health factor. Because there is no discrimination based on a health factor under HIPAA, the wellness exception is not relevant. At the same time, as discussed in section II.H of this preamble, compliance with the HIPAA nondiscrimination and wellness provisions is not determinative of compliance with any other applicable Federal or State law, which may impose additional accessibility standards for wellness programs.

[12] 26 CFR 54.9802–1(b)(2)(ii) and (c)(3); 29 CFR 2590.702(b)(2)(ii) and (c)(3); and 45 CFR 146.121(b)(2)(ii) and (c)(3).

[13] Until these final regulations are effective and applicable, the provisions of the 2006 regulations, at 26 CFR 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f), generally remain applicable to group health plans and group health insurance issuers.

D. Requirements for Health-Contingent Wellness Programs

These final regulations generally retain the proposed five requirements for health-contingent wellness programs, but the regulations have been reorganized, subdividing health-contingent wellness programs into activity-only wellness programs and outcome-based wellness programs, to make it clearer to whom a plan or issuer is required to provide a reasonable alternative standard. The final regulations retain the proposed modification relating to the size of the reward, as well as clarifications that were proposed to address questions and issues raised by stakeholders since the 2006 regulations were issued and to be consistent with the amendments made by the Affordable Care Act.

(1) Frequency of Opportunity to Qualify

These final regulations retain the requirement, for both activity-only and outcome-based wellness programs, that individuals eligible for the program be given the opportunity to qualify for the reward at least once per year. As stated in the preamble to the 2006 regulations and the proposed regulations, the once-per-year requirement was included as a bright-line standard for determining the minimum frequency that is consistent with a reasonable design for promoting good health or preventing disease.[14]

(2) Size of Reward

Like the proposed regulations, these final regulations continue to limit the total amount of the reward for health-contingent wellness programs (both activity-only and outcome-based) with respect to a plan, whether offered alone or coupled with the reward for other health-contingent wellness programs. Specifically, as in the proposed regulations, the total reward offered to an individual under all health-contingent wellness programs with respect to a plan cannot exceed the applicable percentage (as defined in paragraph (f)(5) of the final regulations) of the total cost of employee-only coverage under the plan, taking into account both employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage. If, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the health-contingent wellness program, the reward cannot exceed the applicable percentage of the total cost of the coverage in which the employee and any dependents are enrolled (such as family coverage or employee-plus-one coverage).

Several comments addressed health-contingent wellness programs that allow dependents to participate, and what portion of the reward should be attributable to each participating dependent. For health-contingent wellness programs that allow a class of dependents to participate, some commenters suggested that the maximum allowed reward or incentive be prorated based on the portion of the premium or contribution attributable to that family member. These commenters argued that if, for example, one family member fails to meet the standard related to a health factor, the entire family should not be faced with the maximum penalty. Other commenters requested that the Departments not set forth rules for the apportionment of the reward where dependent coverage exists. These commenters argued that it would be an administrative challenge to apportion the reward to each covered family member. While final regulations issued by HHS under PHS Act section 2701 require health insurance issuers in the small group market [15] to apply rating variations to family coverage based on the portion of the premium attributable to each family member covered under the coverage,[16] these final regulations do not set forth detailed rules governing apportionment of the reward under a health-contingent wellness program. Instead, plans and issuers have flexibility to determine apportionment of the reward among family members, as long as the method is reasonable. Additional subregulatory guidance may be provided by the Departments if questions persist or if the Departments become aware of apportionment designs that seem unreasonable.

(3) Reasonable Design

Consistent with the 2006 regulations and PHS Act section 2705(j), these final regulations continue to require that health-contingent wellness programs be reasonably designed to promote health or prevent disease, whether activity-only or outcome-based. Some commenters urged that the Departments not impose a rigid set of pre-approved wellness program structures or guidelines, which may inhibit innovation in designing wellness programs. On the other hand, other commenters requested that the Departments require that all wellness programs be based on evidence-based clinical guidelines and national standards established by bodies such as the Centers for Disease Control and Prevention (CDC), Centers for Medicare & Medicaid Services, or the National Institutes of Health. These final regulations state that a wellness program is reasonably designed if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and is not overly burdensome, is not a subterfuge for discrimination based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. The determination of whether a health-contingent wellness program is reasonably designed is based on all the relevant facts and circumstances. While programs are not required to be accredited or based on particular evidence-based clinical standards, these practices, such as those found in CDC's Guide to Community Preventive Services,[17] may increase the likelihood of wellness program success and are encouraged as a best practice.

These final regulations continue to provide plans and issuers flexibility and encourage innovation.[18] Some commenters requested confirmation that plans and issuers could design wellness programs that are limited to targeted groups of individuals with adverse health factors. Consistent with paragraph (g) of the 2006 regulations, nothing in these final regulations

[14] *See* 71 FR at 75018. *See also* 77 FR at 70623.

[15] Small group market means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. *See* PHS Act section 2791(e)(5); 45 CFR 144.103. For this purpose, for plan years beginning on or after January 1, 2014, amendments made by the Affordable Care Act provide that the term ''small employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. *See* PHS Act section 2791(e)(4). In the case of plan years beginning before January 1, 2016, a State may elect to substitute ''50 employees'' for ''100 employees'' in its definition of a small employer. *See* section 1304(b)(3) of the Affordable Care Act.

[16] 45 CFR 147.102(c).

[17] *See www.thecommunityguide.org/index.html.*

[18] The preamble to the 2006 regulations stated that the ''reasonably designed'' standard was designed to prevent abuse, but otherwise was ''intended to be an easy standard to satisfy . . . There does not need to be a scientific record that the method promotes wellness to satisfy this standard. The standard is intended to allow experimentation in diverse ways of promoting wellness.'' *See* 71 FR at 75018. The preamble also stated that the Departments did not ''want plans and issuers to be constrained by a narrow range of programs . . . but want plans and issuers to feel free to consider innovative programs for motivating individuals to make efforts to improve their health.'' *See* 71 FR at 75019.

prevents a plan or issuer from establishing more favorable rules for eligibility or premium rates (including rewards for adherence to certain wellness programs) for individuals with an adverse health factor than for individuals without the adverse health factor.

Several comments requested that the reasonable design requirement include strong consumer protections to ensure that the opportunity for a discount is available in practice and accessible to all individuals regardless of health status. Some commenters argued that wellness programs which set clear markers of medical illness, disability, or largely non-preventable conditions as standards are not reasonably designed and should therefore be prohibited under the final regulations. Other commenters suggested that a ''reasonably designed'' wellness program must include a set of programs, resources, and worksite policies designed to promote health and prevent disease and must include more than a biometric test.

After consideration of all the comments, as in the proposed rules, the final regulations direct that an outcome-based wellness program must provide a reasonable alternative standard to qualify for the reward, for all individuals who do not meet the initial standard that is related to a health factor, in order to be reasonably designed. This approach is intended to ensure that outcome-based programs are more than mere rewards in return for results in biometric screenings or responses to a health risk assessment, and are instead part of a larger wellness program designed to promote health and prevent disease, ensuring the program is not a subterfuge for discrimination or underwriting based on a health factor.

(4) Uniform Availability and Reasonable Alternative Standards

An important element of these final regulations is the requirement that the full reward under a health-contingent wellness program, whether activity-only or outcome-based, be available to all similarly situated individuals. As stated earlier, the proposed regulations included requirements that, in certain circumstances, a health-contingent wellness program provide a reasonable alternative standard (or waiver of the otherwise applicable standard) and, to the extent that a plan's initial standard for obtaining a reward (or a portion of a reward) is based on the results of a measurement, test, or screening that is related to a health factor (such as a biometric examination or a health risk assessment), provide a different, reasonable means of qualifying for the reward. Several commenters pointed out that the interaction between these two requirements was confusing and unclear. As discussed earlier in this preamble, these final regulations retain the same requirements contained in the proposed regulations, but the terminology has been changed to reduce confusion and provide clarity for the regulated community.

Many clarifications regarding the reasonable alternative standards are equally applicable to activity-only wellness programs and outcome-based wellness programs. First, in order to satisfy the requirement to provide a reasonable alternative standard, the same, full reward must be available under a health-contingent wellness program (whether an activity-only or outcome-based wellness program) to individuals who qualify by satisfying a reasonable alternative standard as is provided to individuals who qualify by satisfying the program's otherwise applicable standard. Accordingly, while an individual may take some time to request, establish, and satisfy a reasonable alternative standard, the same, full reward must be provided to that individual as is provided to individuals who meet the initial standard for that plan year. (For example, if a calendar year plan offers a health-contingent wellness program with a premium discount and an individual who qualifies for a reasonable alternative standard satisfies that alternative on April 1, the plan or issuer must provide the premium discounts for January, February, and March to that individual.) Plans and issuers have flexibility to determine how to provide the portion of the reward corresponding to the period before an alternative was satisfied (*e.g.,* payment for the retroactive period or pro rata over the remainder of the year) as long as the method is reasonable and the individual receives the full amount of the reward. In some circumstances, an individual may not satisfy the reasonable alternative standard until the end of the year. In such circumstances, the plan or issuer may provide a retroactive payment of the reward for that year within a reasonable time after the end of the year, but may not provide pro rata payments over the following year (a year after the year to which the reward corresponds). The Departments may provide additional subregulatory guidance if questions persist or if the Departments become aware of payment designs that seem unreasonable with respect to individuals who satisfy the reasonable alternative standard.

Other clarifications were retained from the proposed regulations. The final regulations reiterate that, in lieu of providing a reasonable alternative standard, a plan or issuer may always waive the otherwise applicable standard and provide the reward. These final regulations also do not require plans and issuers to establish a particular reasonable alternative standard in advance of an individual's specific request for one, as long as a reasonable alternative standard is provided by the plan or issuer (or the condition for obtaining the reward is waived) upon an individual's request. Plans and issuers have flexibility to determine whether to provide the same reasonable alternative standard for an entire class of individuals (provided that it is reasonable for that class) or provide the reasonable alternative standard on an individual-by-individual basis, based on the facts and circumstances presented.

The Departments received several comments requesting that the final regulations permit employers to retain flexibility to make reasonable alternative standards health-focused and stringent enough so that these alternatives do not become a loophole for individuals who can meet the initial standard. These final regulations continue to permit plans and issuers flexibility in designing reasonable alternative standards (including using reasonable alternative standards that are health-contingent), while also providing some clarification of what constitutes being ''reasonable'' in the context of an alternative standard.

All the facts and circumstances are taken into account in determining whether a plan or issuer has provided a reasonable alternative standard, including but not limited to the following factors listed in these final regulations:

- If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted) and may not require an individual to pay for the cost of the program.
- The time commitment required must be reasonable.
- If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.
- If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical

professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness.

The final regulations generally retain the factors that were included in the proposed regulations with a few added clarifications. Specifically, in response to comments, the final rules clarify that in order for an alternative standard to be reasonable, the time commitment must be reasonable. For example, requiring attendance nightly at a one-hour class would be unreasonable.

In addition, the proposed regulations stated that if a reasonable alternative standard is compliance with the recommendations of a medical professional who is an agent of the plan, and an individual's personal physician states that the recommendations are not medically appropriate for that individual, the plan must provide a second reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness, and that normal cost sharing could be imposed for medical items and services furnished pursuant to the physician's recommendations. The final rules retain the clarification of the proposed regulations, and add an additional clarification that an individual's personal physician can make recommendations regarding medical appropriateness that must be accommodated with respect to any plan standard (and is not limited to a situation in which a personal physician disagrees with the specific recommendations of an agent of the plan with respect to an individual). This additional clarification is consistent with the final regulations' overall requirement that wellness programs be designed to promote health and prevent disease, and not be a subterfuge for discrimination or underwriting based on a health factor. As stated in the preamble to the Departments' regulations implementing the internal claims and appeals and external review processes under PHS Act section 2719, adverse benefit determinations based on whether a participant or beneficiary is entitled to a reasonable alternative standard for a reward under a wellness program are considered to involve medical judgment and therefore are eligible for Federal external review.[19] Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished in accordance with the physician's recommendations.

The Departments continue to maintain that, with respect to tobacco cessation, ''overcoming an addiction sometimes requires a cycle of failure and renewed effort,'' as stated in the preamble to the proposed regulations.[20] For plans with an initial outcome-based standard that an individual not use tobacco, a reasonable alternative standard in Year 1 may be to try an educational seminar. As clarified in an example in the final regulations, an individual who attends the seminar is then entitled to the reward, regardless of whether the individual quits smoking. At the same time, in Year 2, the plan may require completion of a different reasonable alternative standard, such as a complying with a new recommendation from the individual's personal physician or a new nicotine replacement therapy (and completion of that standard would qualify the individual to receive the reward).

It is the view of the Departments that the same can be true with respect to meeting any outcome-based standard. That is, with respect to weight loss and weight management, for example, clinical evidence suggests that a number of environmental factors can influence an individual's ability to achieve a desired health outcome.[21] Under these final regulations, plans and issuers cannot cease to provide a reasonable alternative standard under any health-contingent wellness program merely because an individual was not successful in satisfying the initial standard before; plans and issuers must continue to offer a reasonable alternative standard whether it is the same or different and, to the extent the reasonable alternative standard is, itself, a health-contingent wellness program, it must meet the relevant requirements of these final regulations. Language in the final regulations clarifies that, for example, if a plan or issuer provides a walking program as a reasonable alternative standard to a running program, individuals for whom it is unreasonably difficult due to a medical condition to complete the walking program (or for whom it is medically inadvisable to attempt to complete the walking program) must be provided a reasonable alternative standard to the walking program. Similarly, to the extent a reasonable alternative standard is, itself, an outcome-based wellness program, the reasonable alternative standard must comply with the requirements for outcome-based wellness programs, subject to certain special rules, described below.

While, as discussed earlier, many clarifications regarding the reasonable alternative standards are equally applicable to activity-only wellness programs and outcome-based wellness programs, some of the requirements apply in different ways depending on whether the program is an activity-only or an outcome-based wellness program.

(a) Activity-Only Wellness Programs

An activity-only wellness program must make the full reward under the program available to all similarly-situated individuals. Under paragraph (f)(3)(iv) of these final regulations, a reward under a wellness program is not available to all similarly situated individuals for a period unless the program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

Under an activity-only wellness program, it is permissible for a plan or issuer to seek verification, such as a statement from the individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard in an activity-only wellness program, if reasonable under the circumstances.[22] Some commenters stated that it is common practice to require verification

[19] *See* 76 FR at 37216.

[20] *See* 71 FR 75019 (December 13, 2006) and 77 FR 70624 (November 26, 2012).

[21] *See* Katz DL, O'Connell M, Yeh MC, Nawaz H, Njike V, Anderson LM, Cory S, Dietz W: Task Force on Community Preventive Services. Public health strategies for preventing and controlling overweight and obesity in school and worksite settings: a report on recommendations of the Task Force on Community Preventive Services. MMWR Recomm Rep 2005, 7; 54 (RR–10):1–12. *See also* Fiore, M., Jaen, C., Baker, T., Bailey, W., Benowitz, N., Curry, S., Healton, C. (2008). Treating tobacco use and dependence; 2008 clinical practice guideline. Rockville, MD: U.S. Department of Health and Human Services.

[22] The 2006 regulations provided that it is permissible for a plan or issuer to seek verification, such as a statement from the individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard. The Affordable Care Act amendments codified this provision with one modification: PHS Act section 2705(j)(3)(D)(ii) makes clear that verification, such as a statement from an individual's personal physician, may be required by a plan or issuer ''if reasonable under the circumstances.''

when an individual requests a reasonable alternative standard and urged the Departments to permit plans and issuers to require physician verification in all circumstances involving a request for a reasonable alternative standard. Other commenters supported the approach set forth in the proposed rules that limits plans' and issuers' ability to impose verification requirements to verification of claims that require the use of medical judgment to evaluate. Some of these commenters also asked the Departments to clarify that verification, when allowed, could be performed by any type of medical professional. The Departments also received comments on the example in the proposed regulations that stated it would not be reasonable for a plan or issuer to seek verification of a claim that is obviously valid based on the nature of the individual's medical condition that is known to the plan or issuer. Many commenters had questions about what the Departments would consider a plan or issuer to know or not know, cited the fact that different information technology systems exist for wellness program information and claims data, and raised concerns regarding what types of situations would be ''obviously valid'' under this standard.

The Departments originally included the example in the proposed regulations in the context of what these final regulations now refer to as outcome-based wellness programs, so that if an individual requested a reasonable alternative standard after failing to meet an initial standard based on a measurement, test, or screening, the plan or issuer could not then require physician verification of the need for a reasonable alternative standard. As described in more detail below, the reorganized final regulations clarify that, with respect to outcome-based wellness programs, plans and issuers cannot require verification by the individual's physician that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard. While plans and issuers may still require such verification as a condition of providing a reasonable alternative standard in the context of an activity-only wellness program, the reorganization of the final regulations makes the language stating that it would not be reasonable for an issuer to seek verification of a claim which is obviously valid, as it was included in the proposed regulations, now moot. Therefore, after reviewing the comments received in response to the proposed regulations, the Departments have deleted this example from the regulatory text. Plans and issuers are still permitted under these final regulations to seek verification in the case of an activity-only wellness program with respect to requests for a reasonable alternative standard for which it is reasonable to determine that medical judgment is required to evaluate the validity of the request.

In addition, with respect to which type of medical professional can be required by the plan or issuer to provide verification, the final regulations repeat the statutory language. Wellness programs and reasonable alternative standards can vary greatly, and the nature of the program or alternative standard may require different levels of clinical expertise to evaluate reasonableness with respect to any particular individual. These final regulations do not expressly prohibit plan provisions that require verification to be provided by a physician in clinically appropriate circumstances. Nor do these final regulations expressly require that medical professionals other than a physician be permitted to provide verification in specific circumstances if a physician's expertise would be required to evaluate the validity of a request. Instead, the Departments generally view any plan requirement for verification to be subject to the broader standards for reasonable design and intend to examine verification requirements in light of all the relevant facts and circumstances. The Departments may provide future guidance on this issue.

A number of commenters raised concerns about the privacy and confidentiality of health information provided to wellness programs, particularly with respect to employer access to such information and the potentially discriminatory results of such access. As noted in section II.H later in this preamble, these final regulations are implementing only the provisions regarding wellness programs in the Affordable Care Act. Other State and Federal laws may apply with respect to the privacy, disclosure, and confidentiality of information provided to these programs. For example, HIPAA-covered entities, including certain health plans and providers, must comply with the HIPAA Privacy and Security Rules [23] with respect to the confidentiality of individually identifiable health information, and employers subject to the Americans with Disabilities Act of 1990 (ADA) must comply with any applicable ADA requirements for disclosure and confidentiality of medical information and non-discrimination on the basis of disability.

(b) Outcome-Based Wellness Programs

Outcome-based wellness programs allow plans and issuers to conduct screenings and employ measurement techniques in order to target wellness programs effectively, as discussed earlier. For example, plans and issuers are able to target only individuals with high cholesterol for participation in cholesterol reduction programs, or individuals who use tobacco for participation in tobacco cessation programs, rather than the entire population of participants and beneficiaries, with the reward based on health outcomes or participation in reasonable alternatives. For outcome-based wellness programs to meet the requirement that the reward be available to all similarly situated individuals, the proposed regulations generally required that the program allow a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual who does not meet the initial standard based on a measurement, test, or screening. Several commenters asserted that a reasonable alternative standard should be required to be made available only to individuals who have a medical condition that prevents them from meeting the initial standard. As discussed earlier, programs consisting solely of a measurement, test, or screening are not reasonably designed to promote health and prevent disease. Therefore, if an individual does not meet a plan's target biometrics (or other, similar initial standards), that individual must be provided with a reasonable alternative standard regardless of any medical condition or other health status, to ensure that outcome-based initial standards are not a subterfuge for discrimination or underwriting based on a health factor.

The requirement to provide a reasonable alternative standard to all individuals who do not meet or achieve a particular health outcome is not intended to transform all outcome-based wellness programs to participatory wellness programs, although plans may choose to utilize participatory programs, such as educational programs, when designing reasonable alternative standards. Plans and issuers may provide reasonable alternative standards that are themselves health-contingent wellness programs. To the extent a reasonable alternative standard under

[23] *See* 45 CFR Parts 160 and 164.

an outcome-based wellness program is, itself, an activity-only wellness program, the reasonable alternative standard must comply with the requirements for activity-only programs as if it were an initial program standard. Therefore, for example, as discussed in more detail earlier in this preamble, if a plan or issuer provides a walking program as an alternative to a running program, the plan must provide reasonable alternatives to individuals who cannot complete the walking program because of a medical condition.

Moreover, to the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, another outcome-based wellness program, it must generally comply with the requirements for outcome-based wellness programs, subject to certain special rules. Among other things, these special rules prevent a never-ending cycle of reasonable alternative standards being required to be provided by plans and issuers, while also ensuring that a reasonable alternative standard prescribed for an individual is, in fact, reasonable in light of the individual's actual circumstances, as determined to be medically appropriate in the judgment of the individual's personal physician. Under the first special rule, the final regulations provide that the reasonable alternative standard cannot be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances. For example, if the initial standard is to achieve a BMI less than 30, the reasonable alternative standard cannot be to achieve a BMI less than 31 on that same date. However, if the initial standard is to achieve a BMI less than 30, a reasonable alternative standard for the individual could be to reduce the individual's BMI by a small amount or a small percentage over a realistic period of time, such as within a year. Second, an individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request. The individual can make a request to involve a personal physician's recommendations at any time and the personal physician can adjust the physician's recommendations at any time, consistent with medical appropriateness, as determined by the personal physician.

With respect to outcome-based wellness programs, it is not reasonable to require verification, such as a statement from the individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard. (As discussed in the preceding paragraph, however, an individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request.) However, if a plan or issuer provides an activity-only wellness program as an alternative to the otherwise applicable measurement, test, or screening of the outcome-based wellness program, then the plan or issuer may, if reasonable under the circumstances, seek verification with respect to the activity-only component of the program that it is unreasonably difficult due to a medical condition for an individual to perform or complete the activity (or it is medically inadvisable to attempt to perform or complete the activity). For example, if an outcome-based wellness program requires participants to maintain a certain healthy weight and provides a diet and exercise program for individuals who do not meet the targeted weight (which is an activity-only standard), a plan or issuer may seek verification that a second reasonable alternative standard is needed for individuals for whom it would be unreasonably difficult due to a medical condition to comply, or medically inadvisable to attempt to comply, with the diet and exercise program, due to a medical condition.

(5) Notice of Availability of Reasonable Alternative Standard

These final regulations, like the proposed regulations, require plans and issuers to disclose the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard) in all plan materials describing the terms of a health-contingent wellness program (both activity-only and outcome-based wellness programs). These final regulations clarify that a disclosure of the availability of a reasonable alternative standard includes contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated. For outcome based-wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard.

For all health contingent wellness programs (both activity-only and outcome-based wellness programs), if plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. For example, a summary of benefits and coverage required under section 2715 of the PHS Act that notes that cost sharing may vary based on participation in a diabetes wellness program, without describing the standards of the program, would not trigger this disclosure. In contrast, a plan disclosure that references a premium differential based on tobacco use, or based on the results of a biometric exam, is a disclosure describing the terms of a health-contingent wellness program and, therefore, must include this disclosure.

The proposed regulations provided new sample language in the regulatory text and in examples that was intended to be simpler for individuals to understand and to increase the likelihood that those who qualify for a reasonable alternative standard will contact the plan or issuer to request one. Some commenters supported the new sample language, while others suggested additions and modifications. Several commenters proposed adding additional information to the notice, in most cases related to requests for a reasonable alternative standard. The model notice is intended to be brief and many of the details regarding a wellness program are available in other plan documents.[24] Accordingly, these final regulations do not adopt all of the suggestions made by commenters (for example, the sample language does not provide examples of reasons why an employee may request a reasonable alternative or government contact information for complaints). However, the sample language now includes a statement that recommendations of an individual's personal physician will be accommodated.

E. Applicable Percentage

Paragraph (f)(5) of the final regulations sets the applicable percentage for the size of the reward under a health-contingent wellness

[24] For ERISA plans, wellness program terms (including the availability of any reasonable alternative standard) are generally required to be disclosed in the summary plan description (SPD), as well as in the applicable governing plan documents (which must be provided upon request), if compliance with the wellness program affects premiums, cost sharing, or other benefits under the terms of the plan.

program. The 2006 regulations specified 20 percent as the maximum permissible reward for participation in a health-contingent wellness program. PHS Act section 2705(j)(3)(A), effective for plan years beginning on or after January 1, 2014, increases the maximum reward to 30 percent and authorizes the Departments to increase the maximum reward to as much as 50 percent, if the Departments determine that such an increase is appropriate. These final regulations increase the applicable percentage from 20 percent to 30 percent, effective for plan years beginning on or after January 1, 2014, with an increase of an additional 20 percentage points (to 50 percent) for health-contingent wellness programs designed to prevent or reduce tobacco use. Examples illustrate how to calculate the applicable percentage.

As described in the proposed regulations, the additional increase for programs designed to prevent or reduce tobacco use is warranted to conform to the new PHS Act section 2701, to avoid inconsistency across group health coverage, whether insured or self-insured, or offered in the small group or large group market, and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans. Specifically, PHS Act section 2701, the ''fair health insurance premium'' provision, sets forth the factors that issuers may use to vary premium rates in the individual or small group market. PHS Act section 2701(a)(1)(A)(iv) provides that issuers in the individual and small group markets cannot vary rates for tobacco use by more than a ratio of 1.5 to 1 (that is, allowing up to a 50 percent premium surcharge for tobacco use). HHS published a final regulation implementing PHS Act section 2701 [25] stating that health insurance issuers in the small group market are permitted to implement the tobacco use surcharge under PHS Act section 2701 to employees only in connection with a wellness program meeting the standards of PHS Act section 2705(j) and its implementing regulations.

As discussed in the proposed rule, to coordinate these regulations with the tobacco use rating provisions of PHS Act section 2701, these final regulations use the authority in PHS Act section 2705(j)(3)(A) (and, with respect to grandfathered health plans, the preexisting authority in the HIPAA nondiscrimination and wellness provisions) to increase the applicable percentage for determining the size of the reward for participating in a health-contingent wellness program by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is attributed to tobacco use prevention or reduction.

Several commenters requested clarification that an individual's statement regarding tobacco use is not grounds for a permissible rescission under PHS Act section 2712 and its implementing regulations. Under the HHS final regulation implementing PHS Act section 2701, an issuer that must comply with the requirements under PHS Act section 2701 may not rescind coverage on the basis that an enrollee is found to have reported false or incorrect information about their tobacco use.[26] While the HHS final regulation implementing PHS Act section 2701 addresses rescission, that provision is only applicable to health insurance issuers providing coverage in the individual and small group markets, and does not apply to self-insured group health plans and large insured group health plans.[27] Whether self-insured group health plans and large insured group health plans can recoup the otherwise applicable premiums or benefits is generally determined under the plan terms and other applicable law, such as ERISA. Rescission in connection with an individual's statement regarding tobacco use under self-insured and large, insured group health plans may be addressed by the Departments in future regulations or subregulatory guidance under PHS Act section 2712.

F. Application to Grandfathered Plans

Under these final regulations, the same wellness program standards apply to grandfathered health plans (under authority in the HIPAA nondiscrimination and wellness provisions) and non-grandfathered plans (under the rules of PHS Act section 2705 governing rewards for adherence to certain wellness programs, which largely adopt the wellness program provisions of the 2006 regulations with some modification and clarification). While section 1251 of the Affordable Care Act provides that certain amendments made by the Affordable Care Act (including the amendments to PHS Act section 2705(j)) do not apply to grandfathered health plans,[28] the Departments believe that the provisions of these final regulations are authorized under both HIPAA and the Affordable Care Act. This approach is intended to avoid inconsistency across group health coverage and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.

G. Application of Nondiscrimination Provisions to the Individual Health Insurance Market

The HHS proposed regulations included a new 45 CFR 147.110 to apply the nondiscrimination protections of the 2006 regulations to non-grandfathered individual health insurance coverage effective for policy years beginning on or after January 1, 2014. The proposed regulation, however, did not extend the wellness provisions to the individual health insurance market because the wellness exception of PHS Act section 2705(j) does not apply to the individual health insurance market.

Commenters requested that the wellness provisions be extended to the individual market or that states be allowed to authorize participatory programs in the individual market. Although the proposed rule addressing the individual market is being finalized without change, it is HHS's belief that participatory wellness programs in the individual market do not violate the nondiscrimination provisions provided that such programs are consistent with State law and available to all similarly situated individuals enrolled in the individual health insurance coverage. This is because participatory wellness programs do not base rewards on achieving a standard related to a health factor, and thus do not discriminate based upon health status.

[25] *See* 45 CFR 147.102(a)(1)(iv), published on February 27, 2013 at 78 FR 13406.

[26] The remedy of recouping the tobacco premium surcharge that should have been paid since the beginning of the plan or policy year is provided under PHS Act section 2701 and its implementing regulations. As stated in the preamble to those regulations, it is the view of the Departments (which share interpretive jurisdiction over section 2712 of the PHS Act) that this remedy of recoupment renders any misrepresentation with regard to tobacco use no longer a ''material'' fact for purposes of rescission under PHS Act section 2712 and its implementing regulations. *See* 78 FR 13414.

[27] Starting in 2017, States will have the option of allowing health insurance issuers in the large group market to participate in the Exchange. In States that elect this option, issuers in the large group market will be subject to the rating requirements of PHS section 2701 including the prohibition against rescinding based on failure to report tobacco use.

[28] In these final regulations, the Departments have deleted language from the applicability date section of the proposed regulations that references the regulations regarding grandfathered health plans. This deletion was made to avoid confusion regarding the applicability of these final regulations, which apply the same wellness program standards to both grandfathered and non-grandfathered health plans. The HHS regulations continue to provide, however, that with respect to individual health insurance coverage, the nondiscrimination provisions do not apply to grandfathered health plans.

H. No Effect on Other Laws

Many commenters requested that the Departments address the interaction of these wellness program requirements with other laws. Paragraph (h) of the 2006 regulations clarifies that compliance with the HIPAA nondiscrimination rules (which were later amended by the Affordable Care Act), including the wellness program requirements in paragraph (f), is not determinative of compliance with any other provision of ERISA, or any other State or Federal law, including the ADA.[29] This paragraph is unchanged by these final regulations and remains in effect. As stated in the preamble to the 2006 regulations,[30] the Departments recognize that many other laws may regulate plans and issuers in their provision of benefits to participants and beneficiaries. These laws include, but are not limited to, the ADA, Title VII of the Civil Rights Act of 1964, Code section 105(h) and PHS Act section 2716 (prohibiting discrimination in favor of highly compensated individuals), the Genetic Information Nondiscrimination Act of 2008, the Family and Medical Leave Act, ERISA's fiduciary provisions, and State law. The Departments did not attempt to summarize the requirements of those laws in the 2006 regulations and do not attempt to do so in these final regulations. Employers, plans, issuers, and other service providers should consider the applicability of these laws to their coverage and contact legal counsel or other government agencies such as the Equal Employment Opportunity Commission and State Departments of Insurance if they have questions about those laws. As stated earlier in this preamble, this rulemaking does not modify paragraph (h) or any provisions of the 2006 regulations, other than paragraph (f). The Departments reiterate that compliance with these final regulations is not determinative of compliance with any other applicable requirements.

I. Applicability Date

These final regulations are applicable to group health plans and health insurance issuers in the group and individual markets for plan years (in the individual market, policy years) beginning on or after January 1, 2014, consistent with the statutory effective date of PHS Act section 2705, as well as PHS Act section 2701.

III. Economic Impact and Paperwork Burden

A. Executive Orders 12866 and 13563—Department of Labor and Department of Health and Human Services

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Management and Budget (OMB) has determined that this final rule is a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866, because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the rule has been reviewed by the OMB.

TABLE 1—ACCOUNTING TABLE

Benefits	Quantified: Minimal due to low expected use of higher reward limits. Qualitative: Benefits include the ability to increase the reward based on a health factor to incentivize individuals to meet a health standard associated with improved health, which could improve the health of the individual and reduce health care costs. Improved standards could reduce the use of wellness programs as a subterfuge for discrimination based on a health factor.
Costs	Quantified: Minimal since employers are expected to create or expand wellness programs only if the expected benefit exceeds the cost as well as due to low expected use of higher reward limits. Qualitative: Costs of the rule include clarifications regarding what costs individuals may pay as part of an alternative means of complying with the health standard. To the extent an individual faces an increased cost for not meeting a health standard, the individual would have reduced resources to use for other purposes.
Transfers	Quantified: Minimal due to low expected use of higher reward limits. Qualitative: Transfers resulting from the rule include transfers from those who do not meet a health standard to those who do meet the standard or the associated alternative standard.

Based on the Departments'[31] review of the most recent literature and studies regarding wellness programs, as summarized in Table 1, the Departments have reached the conclusion that the impact of the benefits, costs, and transfers associated with the final rules will be minimal. As discussed in this analysis, few health-contingent wellness programs today come close to meeting the 20 percent limit (based on the data, the usual reward percentage ranges from three to 11 percent).[32] Therefore, the Departments do not believe that expanding the limit to 30 percent (or 50 percent for programs designed to prevent or reduce tobacco use) will result in significantly higher participation of employers in such programs. The Departments provide a qualitative discussion below and cite the survey data used to substantiate this conclusion. Moreover, most wellness programs appear to be participatory wellness programs that do not require an individual to meet a standard related to a health factor in order to obtain a reward. As stated earlier in this preamble, these participatory wellness programs are not required to meet the five requirements that apply to health-contingent wellness programs, but they are required to be made available to all similarly situated individuals regardless of health status.

Although the Departments believe few plans will expand the reward percentage, the Departments provide a qualitative discussion regarding the sources of benefits, costs, and transfers that could occur if plans were to expand the reward beyond the current

[29] Moreover, in paragraph (b) of the 2006 regulations, the general rule governing the application of the nondiscrimination rules to benefits clarifies that whether any plan provision or practice with respect to benefits complies with paragraph (b)(2)(i) does not affect whether the provision or practice is permitted under any other provision of the Code, ERISA, or the PHS Act, the Americans with Disabilities Act, or any other law, whether State or Federal.

[30] *See* 71 FR 75014, 75015 (December 13, 2006).

[31] In section III of this preamble, some subsections have a heading listing one or two of the three Departments. In those subsections, the term ''Departments'' generally refers only to the Departments listed in the heading.

[32] The 2012 RAND Employer Survey found that the maximum premium differential offered in a survey respondent was 16 percent.

maximum of 20 percent. Currently, insufficient broad-based evidence makes it difficult to definitively assess the impact of workplace wellness programs on health outcomes and cost, although, overall, employers largely report that workplace wellness programs in general (participatory wellness programs and health-contingent wellness programs) are delivering on their intended objectives of improving health and reducing costs.

The one source of potential additional cost discussed in the impact analysis is the clarification that plans must provide a reasonable alternative standard. The Departments present evidence that currently employers not only allow a reasonable alternative standard, but that most employers already pay for these alternatives. The Departments do not have an estimate of how many plans are not currently paying for alternatives consistent with the clarifications set forth in the final regulations, but the number appears to be small. The Departments also employ economic logic to conclude that employers will create or expand their wellness program and provide reasonable alternatives only if the expected benefits exceed the expected costs. Therefore, the Departments believe that the benefits of the final rule will justify the costs.

B. Background and Need for Regulatory Action—Department of Labor and Department of Health and Human Services

As discussed earlier in this preamble, on December 13, 2006, the Departments published joint final regulations implementing the HIPAA nondiscrimination and wellness provisions, which, among other things, allowed plans and issuers with health-contingent wellness programs to vary benefits (including cost-sharing mechanisms), premiums, or contributions based on whether an individual has met the standards of a wellness program that met five specific requirements. *See* section I.B. of this preamble for a detailed discussion of the HIPAA nondiscrimination and wellness provisions and the 2006 regulations.

C. Regulatory Alternatives—Department of Labor and Department of Health and Human Services

The 2006 regulations outlined five specific criteria that must be met for health-contingent wellness programs to comply with the nondiscrimination requirements, including that the total reward for wellness programs offered by a plan sponsor not exceed 20 percent of the total cost of coverage under the plan.[33] As amended by the Affordable Care Act, the nondiscrimination and wellness provisions of PHS Act section 2705 largely reflect the 2006 regulations with some modification and clarification. Most notably, it increased the maximum reward that can be provided under a health-contingent wellness program from 20 percent to 30 percent and authorized the Departments to increase the maximum reward to as much as 50 percent if the Departments determine that such an increase is appropriate.

PHS Act section 2701(a)(1)(A)(iv) provides that issuers in the individual and small group markets cannot vary rates for tobacco use by more than a ratio of 1.5 to 1 (that is, allowing up to a 50 percent premium surcharge for tobacco use). PHS Act section 2701 applies to non-grandfathered health insurance coverage in the individual and small group markets, but does not apply in the large group market or to self-insured plans. On February 27, 2013, HHS published a final regulation stating that issuers in the small group market are permitted to implement the tobacco use surcharge under PHS Act section 2701 to employees only in connection with a wellness program meeting the standards of PHS Act section 2705(j) and its implementing regulations.[34]

An important policy goal of the Departments is to provide the large group market and self-insured plans and grandfathered health plans with the same flexibility as non-grandfathered plans in the small group market to promote tobacco-free workforces. The Departments considered several regulatory alternatives to meet this objective, including the following:

(1) *Stacking premium differentials.* One alternative considered was to permit a 50 percent premium differential for tobacco use in the small group market under PHS Act section 2701 without requiring a reasonable alternative standard. Under PHS Act section 2705, an additional 30 percent premium differential would also be permitted if the five criteria for a health-contingent wellness program were met (including the offering of a reasonable alternative standard). Under this option, an 80 percent premium differential would have been allowable in the small group market based on factors related to health status. Large and self-insured plans would have been limited to the 30 percent maximum reward. Allowing such a substantial difference between what was permissible in the small group market and the large group market was not in line with the Departments' policy goal of providing consistency in flexibility for plans.

(2) *Concurrent premium differentials with no reasonable alternative required to be offered for tobacco use.* Another alternative would be to read sections 2701 and 2705 together such that, for non-grandfathered health plans in the small group market, up to a 50 percent premium differential would be permitted based on tobacco use, as authorized under PHS Act section 2701(a)(1)(A)(iv), with no reasonable alternative standard required for the tobacco use program. With respect to non-tobacco-related wellness programs, a reward could be offered only to the extent that a tobacco use wellness program were less than 30 percent of the cost of coverage because the two provisions apply concurrently, and a reward would not be permitted under PHS Act section 2705 if the maximum reward already were exceeded by virtue of PHS Act section 2701. Thus, the 50 percent tobacco surcharge under PHS Act section 2701 would be available only to non-grandfathered, insured, small group plans. The chosen approach is intended to avoid inconsistency and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.

D. Current Use of Wellness Programs and Economic Impacts—Department of Labor and Department of Health and Human Services

The current use of wellness programs and economic impacts of these final regulations are discussed in this analysis.

Wellness programs [35] have become common among employers in the United States. The 2012 Kaiser/HRET survey indicates that 63 percent of all employers who offered health benefits also offered at least one wellness program.[36] A RAND Employer Survey found that 51 percent of employers offer wellness programs.[37] The uptake of

[33] *See* 26 CFR 54.9802–1(f)(2)(i), 29 CFR 2590.702(f)(2)(i), and 45 CFR 146.121(f)(2)(i).

[34] *See* 45 CFR 147.102(a)(1)(iv), published on February 27, 2013 at 78 FR 13406.

[35] On behalf of the Departments, RAND researchers did a review of the current literature on this topic. ''A Review of the U.S. Workplace Wellness Market'' February 2012. The report can be found at *http://www.dol.gov/ebsa/pdf/workplacewellnessmarketreview2012.pdf.*

[36] Kaiser Family Foundation, *Employer Health Benefits: 2012 Annual Survey.* 2012, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

[37] On behalf of the Departments, RAND produced the ''Workplace Wellness Programs Study Final Report,'' to submit to Congress contemporaneous

Continued

wellness programs continues to be more common among large employers. For example, the Kaiser/HRET survey found that health risk assessments are offered by 38 percent of large employers offering health benefits, but only 18 percent of employers with fewer than 200 workers.

The Kaiser/HRET survey indicates that 27 percent of all firms and 65 percent of large firms offered weight loss programs, while 29 percent and 65 percent, respectively, offered gym memberships or on-site exercise facilities. Meanwhile, 30 percent of all employers and 70 percent of large employers offered smoking cessation resources. Despite widespread availability, actual participation of employees in wellness programs remains limited. While no nationally representative data exist, a 2010 non-representative survey suggests that typically less than 20 percent of eligible employees participate in wellness interventions such as smoking cessation.[38]

Currently, insufficient broad-based evidence makes it difficult to definitively assess the impact of workplace wellness on health outcomes and cost; however, available evidence suggests that wellness programs may have some effect on improving health outcomes. The RAND Corporation's analysis of the Care Continuum Alliance (CCA) database [39] found statistically significant and clinically meaningful improvements in exercise frequency, smoking behavior, and weight control between wellness program participants and non-participants.

Overall, employers largely report that workplace wellness programs are delivering on their intended benefit of improving health and reducing costs. According to the 2012 Kaiser/HRET survey, 73 percent of respondents that offered wellness programs stated that these programs improved employee health, and 52 percent believed that they reduced costs. Larger firms (defined as those with more than 200 workers in the Kaiser/HRET survey) were more positive in believing that wellness programs reduced costs, as 68 percent said that it reduced cost, as opposed to 51 percent among smaller firms.[40] Forty percent of respondents to a survey by Buck Consultants indicated that they had measured the impact of their wellness program on the growth trend of their health care costs, and of these, 45 percent reported a reduction in that growth trend. The majority of these employers, 61 percent, reported that the reduction in growth trend of their health care costs was between two and five percentage points per year.[41] There are numerous accounts of the positive impact of workplace wellness programs in many industries, regions, and types of employers. For example, RAND determined in their analysis that available data are suggestive that incentives above $50 are effective to encourage participation in wellness programs, and that incentives above $200 have a small, but statistically significant, effect on weight loss, exercise, and smoking outcomes. Additionally, a recent article published by the *Harvard Business Review* cited positive outcomes reported by private-sector employers along several different dimensions, including health care savings, reduced absenteeism, and employee satisfaction.[42]

Several studies that looked at the impact of smoking cessation programs found significantly higher quit rates or less tobacco use.[43] Smoking cessation programs typically offered education and counseling to increase social support.[44] RAND found notable evidence of the effectiveness of smoking cessation programs in its analysis of the CCA database and case studies. The CCA database analysis found that participation in a program targeting smoking cessation decreases the smoking rate among participating smokers by 30 percent in the first year. Employer D in RAND's case studies reported that a smoking cessation program helped 33 employees quit smoking, which resulted in a one-percentage point decrease in the total number of smokers. Two other studies reported that individuals in the intervention group quit smoking at a rate approximately 10 percentage points higher than those in the control group, and another reported that participants were almost four times as likely as nonparticipants to reduce tobacco use.[45]

Overall, evidence on the effectiveness of wellness programs is promising, but it is not yet conclusive. An in-depth evaluation of an extensive wellness program involving a St. Louis hospital system found that the wellness program brought down inpatient hospitalization costs, but these cost savings were cancelled out by increased outpatient costs.[46] Additionally, a recent article published by *Health Affairs* found that employer savings from wellness programs may result more from cost shifting, rather than from healthier outcomes and reduced health care usage.[47] Finally, a study investigating the effectiveness of a smoking cessation program showed significant differences in smoking rates at a one-month follow-up, but showed no significant

with the issuance of these final regulations. This report includes a literature review, case studies, analysis of an employer survey conducted by RAND for the Departments, and a review of Care Continuum Alliance data.

[38] Nyce, S. *Boosting Wellness Participation Without Breaking the Bank.* TowersWatson Insider. July, 2010:1–9.

[39] The Care Continuum Alliance (CCA) is the trade organization of the health and wellness management industry. The CCA database includes data on health plan enrollment, medical and prescription claims, health risk assessment (HRA) responses, biometric screening information, and employee participation in health and wellness programs.

[40] Kaiser Family Foundation, Employer Health Benefits: 2012 Annual Survey. 2012, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

[41] Buck Consultants, Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies. 2010, Buck Consultants: San Francisco, CA.

[42] Berry, L., A. Mirabito, and W. Baun, What's the Hard Return on Employee Wellness Programs? Harvard Business Review, 2010. 88(12): p. 104.

[43] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; 40; McMahon, S.D. and L.A. Jason, Social support in a worksite smoking intervention. A test of theoretical models. Behav Modif, 2000. 24(2): p. 184–201; Okechukwu, C.A., *et al.,* MassBuilt: effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94; Sorensen, G., *et al.,* A comprehensive worksite cancer prevention intervention: behavior change results from a randomized controlled trial (United States). J Public Health Policy, 2003. 24(1): p. 5–25. Gold, D.B., D.R. Anderson, and S.A. Serxner, *Impact of a telephone-based intervention on the reduction of health risks.* Am J Health Promot, 2000. 15(2): p. 97–106; Herman, C.W., *et al., Effectiveness of an incentive-based online physical activity intervention on employee health status.* Journal of Occupational and Environmental Medicine, 2006. 48(9): p. 889–895; Ozminkowski, R.J., *et al., The impact of the Citibank, NA, health management program on changes in employee health risks over time.* J Occup Environ Med, 2000. 42(5): p. 502–11.

[44] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; McMahon, S.D. and L.A. Jason, Social support in a worksite smoking intervention. A test of theoretical models. Behav Modif, 2000. 24(2): p. 184–201.

[45] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; Okechukwu, C.A., *et al.,* MassBuilt: effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94. In the study, 42% of participants reduced their risk for tobacco use. See Gold, D.B., D.R. Anderson, and S.A. Serxner, Impact of a telephone-based intervention on the reduction of health risks. Am J Health Promot, 2000. 15(2): p. 97–106.

[46] Gautam Gowrisankaran, Karen Norberg, Steven Kymes, Michael E. Chernew, Dustin Stwalley, Leah Kemper and William Peck ''A Hospital System's Wellness Program Linked To Health Plan Enrollment Cut Hospitalizations But Not Overall Costs'' Health Affairs, 32, no.3 (2013):477–485.

[47] Jill R. Horwitz, Brenna D. Kelly, and John E. DiNardo ''Wellness Incentives In The Workplace: Cost Savings Through Cost Shifting To Unhealthy Workers'' Health Affairs, 32, no.3 (2013):468–476.

differences in quit rates at six months, highlighting the need to investigate the sustainability of results.[48]

While employer plan sponsors generally are satisfied with the results, more than half stated in a recent survey that they do not know their programs' return on investment.[49] In the RAND Employer Survey, only about half of employers with wellness programs stated that they had formally evaluated program impact, and only two percent reported actual cost savings. When RAND conducted their case studies, they found that none of their employers had formally evaluated their programs, although three of the five case studies did examine some data metrics to conduct some level of assessment.

The Departments are mindful that the peer-reviewed literature, while predominantly positive, covers only a small proportion of the universe of programs, limiting the generalizability of the reported findings. Evaluating such complex interventions is difficult and poses substantial methodological challenges that can invalidate findings. Further, although correlations often can be easily demonstrated, it can be difficult to show causal relationships. For example, it can be difficult to separate individuals' varying levels of motivation to become healthier, and their self-selection to participate in wellness programs, from measures of the effectiveness of wellness programs themselves.

In the Departments' impact analysis for the proposed rules, available data indicated that employers' use of incentives in wellness programs was relatively low. The Departments' review of more recent literature indicates the use of incentives has become more common in wellness programs that are not health-contingent programs. Over two-thirds of RAND Employee Survey respondents reported using incentives to promote employee participation in wellness programs. The Kaiser/HRET Survey also reported that 41 percent offered any kind of incentive, which was nearly double the percent reporting some kind of incentive offering in 2010. Mercer Consulting's 2011 National Survey of Employer-Sponsored Health Plans found similar patterns, estimating 33 percent of those with 500 or more employees provided financial incentives for participating in at least one program, which was a 12 percentage point increase from the 2009 Survey.[50]

Employers, especially large ones, are also looking to continue to add incentives to their wellness programs. For example, the 2012 Mercer Survey found that as much as 87 percent of employers with more than 200 employees plan to add or strengthen incentive programs.[51] TowersWatson found that 17 percent of all employers intend to add a reward or penalty based on tobacco-use status.[52] The use of incentives to promote employee engagement remains poorly understood, so it is not clear how type (for example, cash or non-cash), direction (reward versus penalty), and strength of incentive are related to employee engagement and outcomes. The Health Enhancement Research Organization and associated organizations also recognized this deficiency and provided seven questions for future research.[53] There are also no data on potential unintended effects, such as discrimination against employees based on their health or health behaviors.

Currently, the most commonly incentivized program appears to be associated with completion of a health risk assessment. According to the RAND Employer Survey, 30 percent of employers with a wellness program offered incentives for completing a health risk assessment. The 2009 Mercer survey found similar results, reporting that 10 percent of all firms and 23 percent of large employers that offered a health risk assessment provided an incentive for completing the assessment. For other types of health management programs that the survey assessed, only two to four percent of all employers and 13 to 19 percent of large employers offered incentives.[54] The Kaiser/HRET survey found that 63 percent of large firms that offered a health risk assessment provided a financial incentive to employees who completed it.

Cash and cash-equivalent incentives are the most popular incentive for completion of a health risk assessment. The 2009 Mercer survey reports that five percent of all employers and ten percent of those with 500 or more workers provided cash incentives for completion of a health risk assessment; one percent and two percent, respectively, offering lower cost sharing; and two percent and seven percent, respectively, offering lower premium contributions.[55] Note that in the Mercer survey, the results cited reflect the incentives provided by all firms that offer a health risk assessment.

Incentives may be triggered by a range of different levels of employee engagement. The simplest incentives are triggered by program enrollment—that is, by merely signing up for a wellness program. At the next level, incentives are triggered by program participation—for instance, attending a class or initiating a program, such as a smoking cessation intervention. Other incentive programs may require completion of a program, whether or not any particular health-related goals are achieved, to earn an incentive. The health-contingent incentive programs require successfully meeting a specific health outcome (or an alternative standard) to trigger an incentive, such as verifiably quitting smoking. Health-contingent incentive programs appear to be among the least common incentive schemes. According to the RAND Employer Survey, only 10 percent of employers with more than 50 employees that offer a wellness program use any incentives tied to health standards, only seven percent link the incentives to health insurance premiums, and only seven percent administer results-based incentives through their health plans.

The most common form of outcome-based incentives is reported to be awarded for smoking cessation. The 2010 survey by NBGH and TowersWatson indicated that while 25 percent of responding employers offered a financial incentive for employees to become tobacco-free, only four percent offered financial incentives for maintaining a BMI within target levels, three percent did so for maintaining blood pressure within targets, and three percent for maintaining targeted cholesterol levels.[56] The RAND

[48] Kechukwu, C.A., *et al.,* MassBuilt: effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94.

[49] Buck Consultants, Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies. 2010, Buck Consultants: San Francisco, CA.

[50] Mercer, National Survey of Employer-Sponsored Health Plans: 2011 Survey Report. 2012, Mercer.

[51] ''Employers accelerate efforts to bring health benefit costs under control,'' Mercer: November 16, 2011; Available from: *http://www.mercer.com/press-releases/national-survey-employer-sponsored-health-plans.*

[52] ''Employer Survey on Purchasing Value in Health Care,'' 17th Annual Towers Watson/National Business Group on Health Employer Survey on Purchasing Value in Health Care.

[53] ''Guidance for a Reasonably Designed, Employer-Sponsored Wellness Program Using Outcomes-Based Incentives,'' joint consensus statement of the Health Enhancement Research Organization, American College of Occupational and Environmental Medicine, American Cancer Society and American Cancer Society Cancer Action Network, American Diabetes Association, and American Heart Association.

[54] Mercer, National Survey of Employer-Sponsored Health Plans: 2009 Survey Report. 2010, Mercer.

[55] Mercer, National Survey of Employer-Sponsored Health Plans: 2009 Survey Report. 2010, Mercer.

[56] TowersWatson, Raising the Bar on Health Care: Moving Beyond Incremental Change.

Employer Survey found that almost the same percentage of employers rewarded actual smoking cessation (19%) as rewarded mere participation in a smoking cessation program (21%), whereas employers were three to four times as likely to reward participation as outcomes for other health factors. When RAND conducted its case studies for the Departments, they found that four of five employers targeted smoking cessation outcomes with incentives, whereas only two of five employers had incentives for other outcomes.

The value of incentives can vary widely. Estimates from representative surveys of the average value of incentives per year range between $152 [57] and $557,[58] or between three and 11 percent of the $5,049 average cost of individual coverage in 2010,[59] among employees who receive them. According to the RAND Employer Survey, the maximum incentives average less than 10 percent. This suggests that companies typically are not close to reaching the 20 percent of the total cost of coverage threshold set forth in the 2006 regulations.

The Departments lack sufficient information to assess how firms that currently are at the 20 percent limit will respond to the increased limits. The Departments received comments indicating that some firms may increase their limits, as permitted by the final rules; however, the number of these firms currently at the 20 percent limit is low. Furthermore, if a large number of firms already viewed the current 20 percent reward limit as sufficient, then the Departments would not expect that increasing the limit would provide an incentive for program design changes. These findings indicate that, based on currently available data, increasing the maximum reward for particpating in a health-contingent wellness program to 30 percent (and the Departments' decision to allow an additional 20 percentage points for programs designed to prevent or reduce tobacco use) is unlikely to have a significant impact.

It is possible that the increased wellness program reward limits will incentivize firms without health-contingent wellness programs to establish them. The Departments, however, do not expect a significant number of new programs to be created as a result of this change because firms without health-contingent wellness programs could already have provided rewards up to the 20 percent limit before the enactment of the Affordable Care Act, but did not.

Two important elements of these final regulations are (1) the standard that the reward under a health-contingent wellness program be available to all similarly situated individuals and (2) the standard that a program be reasonably designed to promote health or prevent disease.[60]

As discussed earlier in this preamble, the final regulations do not prescribe a particular type of alternative standard that must be provided. Instead, they permit plan sponsors flexibility to provide any reasonable alternative. The Departments expect that plan sponsors will select alternatives that entail the minimum net costs (or, stated differently, the maximum net benefits) that are possible to achieve offsetting benefits, such as a higher smoking cessation success rate.

It seems reasonable to presume that the net cost plan sponsors will incur in the provision of alternatives, including transfers as well as new economic costs and benefits, will not exceed the transfer cost of waiving surcharges for all individuals who qualify for alternatives. The Departments expect that many plan sponsors will find more cost effective ways to satisfy this requirement, should they exercise the option to provide incentives through a health-contingent wellness program, and that the true net cost to them will therefore be much smaller than the transfer cost of waiving surcharges for all plan participants who qualify for alternatives. The Departments have no basis for estimating the magnitude of the cost of providing alternative standards or of potential offsetting benefits at this time.

The Departments note that plan sponsors will have strong motivation to identify and provide reasonable alternative standards that have positive net economic effects. Plan sponsors will be disinclined to provide alternatives that undermine their overall wellness program and worsen behavioral and health outcomes, or that make financial rewards available absent meaningful efforts by participants to improve their health habits and overall health. Instead, plan sponsors will be inclined to provide alternatives that sustain or reinforce plan participants' incentive to improve their health habits and overall health, and/or that help participants make such improvements. It therefore seems likely that gains in economic welfare from this requirement will equal or outweigh losses. The Departments intend that the requirement to provide a reasonable alternative standard will eliminate instances where wellness programs serve only to shift costs to higher risk individuals and increase instances where programs succeed at helping high risk individuals improve their health.

In considering the transfers that might derive from the availability of (and participants' satisfaction with) reasonable alternative standards, the transfers arising from this requirement may take the form of transfers to individuals who satisfy a reasonable alternative standard, to such individuals from other individuals, or some combination of these. The existence of a health-contigent wellness program creates a transfer from those who do not meet the standard to those who do meet the standard. Allowing individuals to satisfy a reasonable alternative standard in order to qualify for a reward is a transfer to those who satisfy the reasonable alternative standard from everyone else in the risk pool.

The reward associated with the wellness program is an incentive to encourage individuals to meet health standards associated with better or improved health, which in turn is associated with lower health care costs. If the rewards are effective, health care costs will be reduced as an individual's health improves. Some of these lower health care costs could translate into lower premiums paid by employers and employees, which could offset some of the transfers. To the extent larger rewards are more effective at improving health and lowering costs, these final regulations will produce more benefits than the current requirements.

Rewards also could create costs to individuals and to the extent the new larger rewards create more costs than smaller rewards, these final regulations may increase the costs relative to the 2006 regulations. To the extent an individual does not meet a standard or satisfy a reasonable alternative standard, they could face higher costs. (For example, in the case of an individual participating in a wellness program with a tobacco cessation program, a plan or issuer is permitted to apply premium surcharge of up to 50 percent for tobacco use if certain conditions are met.)

Based on the foregoing discussion, the Departments expect the benefits, costs, and transfers associated with these final regulations to be minimal. However, the Departments are not able to provide aggregate estimates, because they do not

[57] Mercer, *National Survey of Employer-Sponsored Health Plans: 2009 Survey Report.* 2010, Mercer.

[58] Linnan, L., *et al., Results of the 2004 national worksite health promotion survey.* American Journal of Public Health, 2008. 98(8): p. 1503–1509.

[59] Kaiser Family Foundation, *Employer Health Benefits: 2010 Annual Survey.*

[60] *See* section II.C, earlier in this preamble for a more detailed discussion of these requirements.

have sufficient data to estimate the number of plans that will take advantage of the new limits.

E. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Departments consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(3) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for welfare benefit plans that cover fewer than 100 participants.[61] While some large employers may have small plans, in general, small employers maintain most small plans. Thus, the Departments believe that assessing the impact of these final regulations on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR § 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Departments requested comments on the appropriateness of this size standard at the proposed rule stage and received several supportive responses and no negative responses.

The Departments expect that these final regulations will affect few small plans. While a large number of small plans offer a wellness program, the 2012 Kaiser/HRET survey reported that only seven percent of employers with fewer than 200 employees had a wellness program that offered cash or cash equivalent incentives (including gift cards, merchandise, or travel incentives.)[62] In addition, only two percent of these firms offered lower employee health plan premiums to wellness participants, less than one percent offered lower deductibles, and less than one percent offered higher health reimbursement account or health savings account contributions. Therefore, the Departments expect that few small plans will be affected by increasing the rewards threshold from 20 percent to 30 percent (50 percent for programs targeting tobacco use prevention or reduction), because only a small percentage of plans have health-contingent wellness programs. Moreover, as discussed in the Economic Impacts section earlier in this preamble, few plans that offer health-contingent wellness programs come close to reaching the 20 percent limit, and most participatory wellness programs are associated with completing the health risk assessment irrespective of the results, which are not subject to the limitation.

The Kaiser/HRET survey also reports that about 80 percent of small plans had their wellness programs provided by the health plan provider. Industry experts indicated to the Departments that when wellness programs are offered by the health plan provider, they typically supply alternative education programs and offer them free of charge. This finding indicates that the requirement in the final rule for health-contingent wellness programs to provide and pay for a reasonable alternative standard for individuals for whom it is either unreasonably difficult or medically inadvisable to meet the original activity-only standard or for all individuals who fail to meet the initial outcome-based standard will impose little new costs or transfers to the affected plans.

The Departments received a comment suggesting that the rule would have a significant economic impact on small entities no matter how they are defined, because a final regulation issued by HHS on February 27, 2013 provided that that issuers in the small group market can vary rates for tobacco use by up to a ratio of 1.5 to 1 (that is, allowing up to a 50 percent premium surcharge for tobacco use), pursuant to PHS Act section 2701(a)(1)(A)(iv) only in connection with a wellness program meeting the standards of PHS Act section 2705(j) and these final regulations.[63] Since there are no data available to support this prediction, and the Departments only received one comment suggesting a substantial increase in the number of wellness programs, the Departments do not believe that a substantial increase in the number of wellness programs will occur.

In the event that the number of wellness programs associated with small plans does increase, the Departments believe that this final rule contains considerable regulatory flexibility for plans to design wellness programs that suit their needs. With this flexibility in mind, the Departments expect that plans will only choose to offer a wellness program if the benefits outweigh the costs. If plans choose to offer a wellness program, they will design one that minimizes costs and is not overly burdensome. With this design flexibility, this rule should not disproportionately impact small entities. Thus, the commenter has highlighted the possibility that this final rule may affect a substantial number of small entities, but the Departments do not see any evidence to indicate that this final rule will have a significant impact on small entities.

Based on the foregoing, the Departments hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act—Department of Labor and Department of the Treasury

The 2006 regulations and the proposed regulations regarding wellness programs did not include an information collection request (ICR). As described earlier in this preamble, these final regulations, like the 2006 final regulations, require plans and issuers to disclose the availability of a reasonable alternative standard to qualify for the reward (and if applicable, the possibility of waiver of the otherwise applicable standard) in all plan materials describing the terms of a health-contingent wellness program (both activity-only and outcome-based wellness programs). These final regulations clarify that a disclosure of the availability of a reasonable alternative standard includes contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated. For outcome-

[61] Under ERISA section 104(a)(2), the Secretary may also provide exemptions or simplified reporting and disclosure requirements for pension plans. Pursuant to the authority of ERISA section 104(a)(3), the Department of Labor has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that cover fewer than 100 participants and satisfy certain other requirements.

[62] Kaiser Family Foundation, *Employer Health Benefits: 2012 Annual Survey.* 2012, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

[63] 78 FR 13405.

based wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. These final regulations include sample language that can be used to satisfy this requirement.

In concluding that these final regulations did not include an ICR, the Departments reasoned that much of the information required was likely already provided as a result of state and local requirements or the usual business practices of group health plans and group health insurance issuers in connection with the offer and promotion of health care coverage. In addition, the sample disclosures would enable group health plans to make any necessary modifications with minimal effort.

Finally, although the final regulations do not include an ICR, the regulations could be interpreted to require a revision to an existing collection of information. Administrators of group health plans covered under Title I of ERISA are generally required to make certain disclosures about the terms of a plan and material changes in terms through a Summary Plan Description (SPD) or Summary of Material Modifications (SMM) pursuant to sections 101(a) and 102(a) of ERISA and related regulations. The ICR related to the SPD and SMM is currently approved by OMB under OMB control number 1210–0039. While these materials may in some cases require revisions to comply with the final regulations, the associated burden is expected to be negligible, and is already accounted for in the SPD, SMM, and the ICR by a burden estimation methodology, which anticipates ongoing revisions. Based on the foregoing, the Departments do not expect that any change to the existing ICR arising from these final regulations will be substantive or material. Accordingly, the Departments have not filed an application for approval of a revision to the existing ICR with OMB in connection with these final regulations.

G. Paperwork Reduction Act—Department of Health and Human Services

As described in earlier in this preamble, The 2006 regulations and the proposed regulations regarding wellness programs did not include an information collection request (ICR). As described earlier in this preamble, these final regulations, like the 2006 final regulations, require plans and issuers to disclose the availability of a reasonable alternative standard to qualify for the reward (and if applicable, the possibility of waiver of the otherwise applicable standard) in all plan materials describing the terms of a health-contingent wellness program (both activity-only and outcome-based wellness programs). These final regulations clarify that a disclosure of the availability of a reasonable alternative standard includes contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated. For outcome-based wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. These final regulations include sample language that can be used to satisfy this requirement.

The burden associated with this requirement was previously approved under OMB control number 0938–0819. We are not seeking reinstatement of the information collection request under the aforementioned OMB control number, since we believe that much of the information required is likely already provided as a result of state and local requirements or the usual business practices of group health plans and group health insurance issuers in connection with the offer and promotion of health care coverage. In addition, the sample disclosures would enable group health plans to make any necessary modifications with minimal effort.

H. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury it has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and, because these final regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this final rule was submitted to the Small Business Administration for comment on its impact on small business.

I. Congressional Review Act

These final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. These regulations, do not constitute a ''major rule,'' as that term is defined in 5 U.S.C. 804 because they are unlikely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

J. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these final regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more, adjusted for inflation.[64]

K. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

In the Departments' view, these final regulations have federalism implications, however, in the Departments' view, the federalism implications of these final regulations are substantially mitigated because, with respect to health insurance issuers, the vast majority of states have enacted

[64] In 2013, that threshold level is approximately $141 million.

laws, which meet or exceed the federal HIPAA standards prohibiting discrimination based on health factors. Therefore, the regulations are not likely to require substantial additional oversight of states by the Department of HHS.

In general, through section 514, ERISA supersedes state laws to the extent that they relate to any covered employee benefit plan, and preserves state laws that regulate insurance, banking, or securities. While ERISA prohibits states from regulating a plan as an insurance or investment company or bank, HIPAA added a new preemption provision to ERISA (as well as to the PHS Act) narrowly preempting state requirements for group health insurance coverage. With respect to the HIPAA nondiscrimination provisions, states may continue to apply state law requirements except to the extent that the requirements prevent the application of the portability, access, and renewability requirements of HIPAA, which include HIPAA's nondiscrimination requirements provisions. HIPAA's Conference Report states that the conferees intended the narrowest preemption of state laws with regard to health insurance issuers (H.R. Conf. Rep. No. 736, 104th Cong. 2d Session 205, 1996). State insurance laws that are more stringent than the federal requirements are unlikely to ''prevent the application of'' the HIPAA nondiscrimination provisions, and therefore are not preempted. Accordingly, states have significant latitude to impose requirements on health insurance issuers that are more restrictive than the federal law.

Guidance conveying this interpretation was published in the **Federal Register** on April 8, 1997 (62 FR 16904) and on December 30, 2004 (69 FR 78720), and these final regulations clarify and implement the statute's minimum standards and do not significantly reduce the discretion given the states by the statute.

HIPAA provides that the states may enforce the provisions of HIPAA as they pertain to issuers, but that the Secretary of HHS must enforce any provisions that a state chooses not to or fails to substantially enforce. When exercising its responsibility to enforce provisions of HIPAA, HHS works cooperatively with the State for the purpose of addressing the state's concerns and avoiding conflicts with the exercise of state authority.[65] HHS has developed procedures to implement its enforcement responsibilities, and to afford the states the maximum opportunity to enforce HIPAA's requirements in the first instance. In compliance with Executive Order 13132's requirement that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, DOL and HHS have engaged in numerous efforts to consult with and work cooperatively with affected state and local officials.

The Departments received a comment letter suggesting that they failed to take into account the reduction in states' tobacco tax revenue that would occur if the proposed regulations result in fewer people smoking. The Departments note that reduced tobacco tax revenue is one of many indirect effects of reduced smoking. However, the Departments believe that any lost tax revenue will be more than offset by the benefits to the public welfare that will result from reduced smoking. As the commenter stated in its letter, ''[t]hrough employees' active participation in nondiscriminatory wellness programs, sick leave, absenteeism, health plan costs, and worker's compensation will be reduced. Needless to mention, a healthier workforce is a more sustainable workforce. Therefore, from the point of view of public health, the rule greatly contributes to the promotion of healthy lifestyle of the states' population. If every small and large entity improves the health of their employees, the overall health of the states will be improved as well.''

In conclusion, throughout the process of developing these regulations, to the extent feasible within the specific preemption provisions of HIPAA, the Departments have attempted to balance the states' interests in regulating health plans and health insurance issuers, and the rights of those individuals that Congress intended to protect through the enactment of HIPAA.

IV. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are adopted, with respect to 45 CFR part 146, pursuant to the authority contained in sections 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92) prior to the amendments made by the Affordable Care Act and sections 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended by the Affordable Care Act; with respect to 45 CFR part 147, pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended by the Affordable Care Act.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Parts 146 and 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

[65] This authority applies to insurance issued with respect to group health plans generally, including plans covering employees of church organizations. Thus, this discussion of federalism applies to all group health insurance coverage that is subject to the PHS Act, including those church plans that provide coverage through a health insurance issuer (but not to church plans that do not provide coverage through a health insurance issuer).

Approved: May 23, 2013.

Beth Tucker,

Deputy Commissioner for Operations Support, Internal Revenue Service.

Signed this May 15, 2013.

Mark Mazur,

Assistant Secretary of the Treasury (Tax Policy).

Dated: April 25, 2013.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: April 29, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Department of the Treasury

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding an entry for § 54.9815–2705 in numerical order to read in part as follows:

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

Section 54.9815–2705 also issued under 26 U.S.C. 9833.

■ **Par. 2.** In § 54.9802–1, paragraph (f) is revised to read as follows:

§ 54.9802–1 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f).

(1) *Definitions.* The definitions in this paragraph (f)(1) govern in applying the provisions of this paragraph (f).

(i) *Reward.* Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(ii) *Participatory wellness programs.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program. Examples of participatory wellness programs are:

(A) A program that reimburses employees for all or part of the cost for membership in a fitness center.

(B) A diagnostic testing program that provides a reward for participation in that program and does not base any part of the reward on outcomes.

(C) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, § 54.9815–2713T requires benefits for certain preventive health services without the imposition of cost sharing.)

(D) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(E) A program that provides a reward to employees for attending a monthly, no-cost health education seminar.

(F) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 54.9802–3T for rules prohibiting collection of genetic information.)

(iii) *Health-contingent wellness programs.* A health-contingent wellness program is a program that requires an individual to satisfy a standard related to a health factor to obtain a reward (or requires an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward). A health-contingent wellness program may be an activity-only wellness program or an outcome-based wellness program.

(iv) *Activity-only wellness programs.* An activity-only wellness program is a type of health-contingent wellness program that requires an individual to perform or complete an activity related to a health factor in order to obtain a reward but does not require the individual to attain or maintain a specific health outcome. Examples include walking, diet, or exercise programs, which some individuals may be unable to participate in or complete (or have difficulty participating in or completing) due to a health factor, such as severe asthma, pregnancy, or a recent surgery. *See* paragraph (f)(3) of this section for requirements applicable to activity-only wellness programs.

(v) *Outcome-based wellness programs.* An outcome-based wellness program is a type of health-contingent wellness program that requires an individual to attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward. To comply with the rules of this paragraph (f), an outcome-based wellness program typically has two tiers. That is, for individuals who do not attain or maintain the specific health outcome, compliance with an educational program or an activity may be offered as an alternative to achieve the same reward. This alternative pathway, however, does not mean that the overall program, which has an outcome-based component, is not an outcome-based wellness program. That is, if a measurement, test, or screening is used as part of an initial standard and individuals who meet the standard are granted the reward, the program is considered an outcome-based wellness program. For example, if a wellness program tests individuals for specified medical conditions or risk factors (including biometric screening such as testing for high cholesterol, high blood pressure, abnormal body mass index, or high glucose level) and provides a reward to individuals identified as within a normal or healthy range for these medical conditions or risk factors, while requiring individuals who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, complying with a walking or exercise program, or complying with a health care provider's plan of care) to obtain the same reward,

the program is an outcome-based wellness program. *See* paragraph (f)(4) of this section for requirements applicable to outcome-based wellness programs.

(2) *Requirement for participatory wellness programs.* A participatory wellness program, as described in paragraph (f)(1)(ii) of this section, does not violate the provisions of this section only if participation in the program is made available to all similarly situated individuals, regardless of health status.

(3) *Requirements for activity-only wellness programs.* A health-contingent wellness program that is an activity-only wellness program, as described in paragraph (f)(1)(iv) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the activity-only wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the activity-only wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iv), a reward under an activity-only wellness program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iv)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an activity-only wellness program, it must comply with the requirements of this paragraph (f)(3) in the same manner as if it were an initial program standard. (Thus, for example, if a plan or issuer provides a walking program as a reasonable alternative standard to a running program, individuals for whom it is unreasonably difficult due to a medical condition to complete the walking program (or for whom it is medically inadvisable to attempt to complete the walking program) must be provided a reasonable alternative standard to the walking program.) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an outcome-based wellness program, it must comply with the requirements of paragraph (f)(4) of this section, including paragraph (f)(4)(iv)(D).

(E) If reasonable under the circumstances, a plan or issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard of an activity-only wellness program. Plans and issuers may seek verification with respect to requests for a reasonable alternative standard for which it is reasonable to determine that medical judgment is required to evaluate the validity of the request.

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Example.* The provisions of this paragraph (f)(3) are illustrated by the following example:

Example. (i) *Facts.* A group health plan provides a reward to individuals who participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to attempt to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* In this *Example,* the program satisfies the requirements of paragraph (f)(3)(iii) of this section because the walking program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the reward under the program is available to all similarly situated individuals. It accommodates individuals for whom it is unreasonably difficult to participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them with the reward even if they do not participate in the walking program (that is, by waiving the condition). The plan also complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

(4) *Requirements for outcome-based wellness programs.* A health-contingent wellness program that is an outcome-based wellness program, as described in paragraph (f)(1)(v) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the outcome-based wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(4)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To ensure that an outcome-based wellness program is reasonably designed to improve health and does not act as a subterfuge for underwriting or reducing benefits based on a health factor, a reasonable alternative standard to qualify for the reward must be provided to any individual who does not meet the initial standard based on a measurement, test, or screening that is related to a health factor, as explained in paragraph (f)(4)(iv) of this section.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the outcome-based wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(4)(iv), a reward under an outcome-based wellness program is not available to all similarly situated individuals for a period unless the program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual who does not meet the initial standard based on the measurement, test, or screening, as described in this paragraph (f)(4)(iv).

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in paragraph (f)(4)(iv)(A) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, an activity-only wellness program, it must comply with the requirements of paragraph (f)(3) of this section in the same manner as if it were an initial program standard. To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, another outcome-based wellness program, it must comply with the requirements of this paragraph (f)(4), subject to the following special rules:

(*1*) The reasonable alternative standard cannot be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances. For example, if the initial standard is to achieve a BMI less than 30, the reasonable alternative standard cannot be to achieve a BMI less than 31 on that same date. However, if the initial standard is to achieve a BMI less than 30, a reasonable alternative standard for the individual could be to reduce the individual's BMI by a small amount or small percentage, over a realistic period of time, such as within a year.

(*2*) An individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request. The individual can make a

request to involve a personal physician's recommendations at any time and the personal physician can adjust the physician's recommendations at any time, consistent with medical appropriateness.

(E) It is not reasonable to seek verification, such as a statement from an individual's personal physician, under an outcome-based wellness program that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard. However, if a plan or issuer provides an alternative standard to the otherwise applicable measurement, test, or screening that involves an activity that is related to a health factor, then the rules of paragraph (f)(3) of this section for activity-only wellness programs apply to that component of the wellness program and the plan or issuer may, if reasonable under the circumstances, seek verification that it is unreasonably difficult due to a medical condition for an individual to perform or complete the activity (or it is medically inadvisable to attempt to perform or complete the activity). (For example, if an outcome-based wellness program requires participants to maintain a certain healthy weight and provides a diet and exercise program for individuals who do not meet the targeted weight, a plan or issuer may seek verification, as described in paragraph (f)(3)(iv)(D) of this section, if reasonable under the circumstances, that a second reasonable alternative standard is needed for certain individuals because, for those individuals, it would be unreasonably difficult due to a medical condition to comply, or medically inadvisable to attempt to comply, with the diet and exercise program, due to a medical condition.)

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an outcome-based wellness program, and in any disclosure that an individual did not satisfy an initial outcome-based standard, the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Examples.* The rules of this paragraph (f)(4) are illustrated by the following examples:

Example 1—Cholesterol screening with reasonable alternative standard to work with personal physician. (i) *Facts.* A group health plan offers a reward to participants who achieve a count under 200 on a total cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan allows the participant to develop an alternative cholesterol action plan in conjunction with the participant's personal physician that may include recommendations for medication and additional screening. The plan allows the physician to modify the standards, as medically necessary, over the year. (For example, if a participant develops asthma or depression, requires surgery and convalescence, or some other medical condition or consideration makes completion of the original action plan inadvisable or unreasonably difficult, the physician may modify the original action plan.) All plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your total cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you and your doctor to find a Health Smart program that is right for you.'' In addition, when any individual participant receives notification that his or her cholesterol count is 200 or higher, the notification includes the following statement: ''Your plan offers a Health Smart program under which we will work with you and your doctor to try to lower your cholesterol. If you complete this program, you will qualify for a reward. Please contact us at [contact information] to get started.''

(ii) *Conclusion.* In this *Example 1,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain cholesterol level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because the cholesterol program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all participants who do not meet the cholesterol standard a reasonable alternative standard to qualify for the reward. Lastly, the plan also discloses in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard the availability of a reasonable alternative standard (including contact information and the individual's ability to involve his or her personal physician), as required by paragraph (f)(4)(v) of this section. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 2—Cholesterol screening with plan alternative and no opportunity for personal physician involvement. (i) *Facts.* Same facts as *Example 1,* except that the wellness program's physician or nurse practitioner (rather than the individual's personal physician) determines the alternative cholesterol action plan. The plan does not provide an opportunity for a participant's personal physician to modify the action plan if it is not medically appropriate for that individual.

(ii) *Conclusion.* In this *Example 2,* the wellness program does not satisfy the requirements of paragraph (f)(4)(iii) of this section because the program does not accommodate the recommendations of the participant's personal physician with regard to medical appropriateness, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is not reasonably designed under paragraph (f)(4)(iii) of this section and is not available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice also does not provide all the content required under paragraph (f)(4)(v) of this section.

Example 3—Cholesterol screening with plan alternative that can be modified by personal physician. (i) *Facts.* Same facts as *Example 2,* except that if a participant's personal physician disagrees with any part of the action plan, the personal physician may modify the action plan at any time, and the plan discloses this to participants.

(ii) *Conclusion.* In this *Example 3,* the wellness program satisfies the requirements of paragraph (f)(4)(iii) of this section because the participant's personal physician may modify the action plan determined by the wellness program's physician or nurse practitioner at any time if the physician states that the recommendations are not medically appropriate, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is reasonably designed under paragraph (f)(4)(iii) of this section and is available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice, which includes a statement that recommendations of an individual's personal physician will be accommodated, also complies with paragraph (f)(4)(v) of this section.

Example 4—BMI screening with walking program alternative. (i) *Facts.* A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the participant satisfies an alternative standard that is reasonable taking into consideration the participant's medical situation, is not unreasonably burdensome or

impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are considered overweight because you have a BMI of over 26, our Start Walking program will help you lose weight and feel better. We will help you enroll. (* *If your doctor says that walking isn't right for you, that's okay too. We will work with you (and, if you wish, your own doctor) to develop a wellness program that is.)'' Participant *E* is unable to achieve a BMI that is 26 or lower within the plan's timeframe and receives notification that complies with paragraph (f)(4)(v) of this section. Nevertheless, it is unreasonably difficult due to a medical condition for *E* to comply with the walking program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the same discount available to *E* that is available to other participants in the BMI program or the alternative walking program, but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain BMI level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because it is reasonably designed to promote health and prevent disease. The program also satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a reasonable alternative standard to qualify for the reward (in this case, a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the walking program is, itself, an activity-only standard and the plan complies with the requirements of paragraph (f)(3) of this section (including the requirement of paragraph (f)(3)(iv) that, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provide a reasonable alternative to those individuals). Moreover, the plan satisfies the requirements of paragraph (f)(4)(v) of this section because it discloses, in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard, the availability of a reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician) to qualify for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 5—BMI screening with alternatives available to either lower BMI or meet personal physician's recommendations. (i) *Facts.* Same facts as *Example 4* except that, with respect to any participant who does not meet the target BMI, instead of a walking program, the participant is expected to reduce BMI by one point. At any point during the year upon request, any individual can obtain a second reasonable alternative standard, which is compliance with the recommendations of the participant's personal physician regarding weight, diet, and exercise as set forth in a treatment plan that the physician recommends or to which the physician agrees. The participant's personal physician is permitted to change or adjust the treatment plan at any time and the option of following the participant's personal physician's recommendations is clearly disclosed.

(ii) *Conclusion.* In this *Example 5,* the reasonable alternative standard to qualify for the reward (the alternative BMI standard requiring a one-point reduction) does not make the program unreasonable under paragraph (f)(4)(iii) or (iv) of this section because the program complies with paragraph (f)(4)(iv)(C)(*4*) of this section by allowing a second reasonable alternative standard to qualify for the reward (compliance with the recommendations of the participant's personal physician, which can be changed or adjusted at any time). Accordingly, the program continues to satisfy the applicable requirements of paragraph (f) of this section.

Example 6—Tobacco use surcharge with smoking cessation program alternative. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances, and discloses contact information and the individual's option to involve his or her personal physician. The plan pays for the cost of participation in the smoking cessation program. Any participant can avoid the surcharge for the plan year by participating in the program, regardless of whether the participant stops smoking, but the plan can require a participant who wants to avoid the surcharge in a subsequent year to complete the smoking cessation program again.

(ii) *Conclusion.* In this *Example 6,* the premium differential satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v). The program is an outcome-based wellness program because the initial standard for obtaining a reward is dependent on the results of a health risk assessment (a measurement, test, or screening). The program is reasonably designed under paragraph (f)(4)(iii) because the plan provides a reasonable alternative standard (as required under paragraph (f)(4)(iv) of this section) to qualify for the reward to all tobacco users (a smoking cessation program). The plan discloses, in all materials describing the terms of the program, the availability of the reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician). Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 7—Tobacco use surcharge with alternative program requiring actual cessation. (i) *Facts.* Same facts as *Example 6,* except the plan does not provide participant *F* with the reward in subsequent years unless *F* actually stops smoking after participating in the tobacco cessation program.

(ii) *Conclusion.* In this *Example 7,* the program is not reasonably designed under paragraph (f)(4)(iii) of this section and does not provide a reasonable alternative standard as required under paragraph (f)(4)(iv) of this section. The plan cannot cease to provide a reasonable alternative standard merely because the participant did not stop smoking after participating in a smoking cessation program. The plan must continue to offer a reasonable alternative standard whether it is the same or different (such as a new recommendation from *F*'s personal physician or a new nicotine replacement therapy).

Example 8—Tobacco use surcharge with smoking cessation program alternative that is not reasonable. (i) *Facts.* Same facts as *Example 6,* except the plan does not facilitate participant *F*'s enrollment in a smoking cessation program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 8,* the requirement for *F* to find and pay for *F*'s own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(4)(iii) and (iv) of this section and the program fails to satisfy the requirements of paragraph (f) of this section.

(5) *Applicable percentage*—(i) For purposes of this paragraph (f), the applicable percentage is 30 percent, except that the applicable percentage is increased by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(ii) The provisions of this paragraph (f)(5) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program with several components, focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the reward for the wellness program, $600, does not exceed the applicable percentage of 30

percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the reward for the wellness program (absence of a $1,000 surcharge), does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage ($1,800).

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds the applicable percentage of 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(5) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account.) Accordingly, the health-contingent wellness program offers a reward that does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage.

(6) *Sample language.* The following language, or substantially similar language, can be used to satisfy the notice requirement of paragraphs (f)(3)(v) or (f)(4)(v) of this section: ''Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.''

* * * * *

■ 3. Section 54.9815–2705 is added to read as follows:

§ 54.9815–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of § 54.9802–1.

(b) *Applicability date.* This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014.

Department of Labor

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons set forth in the preamble, 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 12(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

Subpart B—Health Coverage Portability, Nondiscrimination, and Renewability

■ 5. Section 2590.702 is amended by revising paragraph (f) to read as follows:

§ 2590.702 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f).

(1) *Definitions.* The definitions in this paragraph (f)(1) govern in applying the provisions of this paragraph (f).

(i) *Reward.* Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(ii) *Participatory wellness programs.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program. Examples of participatory wellness programs are:

(A) A program that reimburses employees for all or part of the cost for membership in a fitness center.

(B) A diagnostic testing program that provides a reward for participation in that program and does not base any part of the reward on outcomes.

(C) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, § 2590.715–2713 of this part requires benefits for certain preventive health

services without the imposition of cost sharing.)

(D) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(E) A program that provides a reward to employees for attending a monthly, no-cost health education seminar.

(F) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 2590.702–1 for rules prohibiting collection of genetic information.)

(iii) *Health-contingent wellness programs.* A health-contingent wellness program is a program that requires an individual to satisfy a standard related to a health factor to obtain a reward (or requires an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward). A health-contingent wellness program may be an activity-only wellness program or an outcome-based wellness program.

(iv) *Activity-only wellness programs.* An activity-only wellness program is a type of health-contingent wellness program that requires an individual to perform or complete an activity related to a health factor in order to obtain a reward but does not require the individual to attain or maintain a specific health outcome. Examples include walking, diet, or exercise programs, which some individuals may be unable to participate in or complete (or have difficulty participating in or completing) due to a health factor, such as severe asthma, pregnancy, or a recent surgery. *See* paragraph (f)(3) of this section for requirements applicable to activity-only wellness programs.

(v) *Outcome-based wellness programs.* An outcome-based wellness program is a type of health-contingent wellness program that requires an individual to attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward. To comply with the rules of this paragraph (f), an outcome-based wellness program typically has two tiers. That is, for individuals who do not attain or maintain the specific health outcome, compliance with an educational program or an activity may be offered as an alternative to achieve the same reward. This alternative pathway, however, does not mean that the overall program, which has an outcome-based component, is not an outcome-based wellness program. That is, if a measurement, test, or screening is used as part of an initial standard and individuals who meet the standard are granted the reward, the program is considered an outcome-based wellness program. For example, if a wellness program tests individuals for specified medical conditions or risk factors (including biometric screening such as testing for high cholesterol, high blood pressure, abnormal body mass index, or high glucose level) and provides a reward to individuals identified as within a normal or healthy range for these medical conditions or risk factors, while requiring individuals who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, complying with a walking or exercise program, or complying with a health care provider's plan of care) to obtain the same reward, the program is an outcome-based wellness program. *See* paragraph (f)(4) of this section for requirements applicable to outcome-based wellness programs.

(2) *Requirement for participatory wellness programs.* A participatory wellness program, as described in paragraph (f)(1)(ii) of this section, does not violate the provisions of this section only if participation in the program is made available to all similarly situated individuals, regardless of health status.

(3) *Requirements for activity-only wellness programs.* A health-contingent wellness program that is an activity-only wellness program, as described in paragraph (f)(1)(iv) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the activity-only wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the activity-only wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iv), a reward under an activity-only wellness program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iv)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an activity-only wellness program, it must comply with the requirements of this paragraph (f)(3) in the same manner as if it were an initial program standard. (Thus, for example, if a plan or issuer provides a walking program as a reasonable alternative standard to a running program, individuals for whom it is unreasonably difficult due to a medical condition to complete the walking program (or for whom it is medically inadvisable to attempt to complete the walking program) must be provided a reasonable alternative standard to the walking program.) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an outcome-based wellness program, it must comply with the requirements of paragraph (f)(4) of this section, including paragraph (f)(4)(iv)(D).

(E) If reasonable under the circumstances, a plan or issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard of an activity-only wellness program. Plans and issuers may seek verification with respect to requests for a reasonable alternative standard for which it is reasonable to determine that medical judgment is required to evaluate the validity of the request.

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Example.* The provisions of this paragraph (f)(3) are illustrated by the following example:

Example. (i) *Facts.* A group health plan provides a reward to individuals who participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to attempt to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* In this *Example,* the program satisfies the requirements of paragraph (f)(3)(iii) of this section because the walking program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the reward under the program is available to all similarly situated individuals. It accommodates individuals for whom it is unreasonably difficult to participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them with the reward even if they do not participate in the walking program (that is, by waiving the condition). The plan also complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

(4) *Requirements for outcome-based wellness programs.* A health-contingent wellness program that is an outcome-based wellness program, as described in paragraph (f)(1)(v) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the outcome-based wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(4)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To ensure that an outcome-based wellness program is reasonably designed to improve health and does not act as a subterfuge for underwriting or reducing benefits based on a health factor, a reasonable alternative standard to qualify for the reward must be provided to any individual who does not meet the initial standard based on a measurement, test, or screening that is related to a health factor, as explained in paragraph (f)(4)(iv) of this section.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the outcome-based wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(4)(iv), a reward under an outcome-based wellness program is not available to all similarly situated individuals for a period unless the program allows a

reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual who does not meet the initial standard based on the measurement, test, or screening, as described in this paragraph (f)(4)(iv).

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in paragraph (f)(4)(iv)(A) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, an activity-only wellness program, it must comply with the requirements of paragraph (f)(3) of this section in the same manner as if it were an initial program standard. To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, another outcome-based wellness program, it must comply with the requirements of this paragraph (f)(4), subject to the following special provisions:

(*1*) The reasonable alternative standard cannot be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances. For example, if the initial standard is to achieve a BMI less than 30, the reasonable alternative standard cannot be to achieve a BMI less than 31 on that same date. However, if the initial standard is to achieve a BMI less than 30, a reasonable alternative standard for the individual could be to reduce the individual's BMI by a small amount or small percentage, over a realistic period of time, such as within a year.

(*2*) An individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request. The individual can make a request to involve a personal physician's recommendations at any time and the personal physician can adjust the physician's recommendations at any time, consistent with medical appropriateness.

(E) It is not reasonable to seek verification, such as a statement from an individual's personal physician, under an outcome-based wellness program that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard. However, if a plan or issuer provides an alternative standard to the otherwise applicable measurement, test, or screening that involves an activity that is related to a health factor, then the rules of paragraph (f)(3) of this section for activity-only wellness programs apply to that component of the wellness program and the plan or issuer may, if reasonable under the circumstances, seek verification that it is unreasonably difficult due to a medical condition for an individual to perform or complete the activity (or it is medically inadvisable to attempt to perform or complete the activity). (For example, if an outcome-based wellness program requires participants to maintain a certain healthy weight and provides a diet and exercise program for individuals who do not meet the targeted weight, a plan or issuer may seek verification, as described in paragraph (f)(3)(iv)(D) of this section, if reasonable under the circumstances, that a second reasonable alternative standard is needed for certain individuals because, for those individuals, it would be unreasonably difficult due to a medical condition to comply, or medically inadvisable to attempt to comply, with the diet and exercise program, due to a medical condition.)

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an outcome-based wellness program, and in any disclosure that an individual did not satisfy an initial outcome-based standard, the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Examples.* The provisions of this paragraph (f)(4) are illustrated by the following examples:

Example 1—Cholesterol screening with reasonable alternative standard to work with personal physician. (i) *Facts.* A group health plan offers a reward to participants who achieve a count under 200 on a total cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan allows the participant to develop an alternative cholesterol action plan in conjunction with the participant's personal physician that may include recommendations for medication and additional screening. The plan allows the physician to modify the standards, as medically necessary, over the year. (For example, if a participant develops asthma or depression, requires surgery and convalescence, or some other medical condition or consideration makes completion of the original action plan inadvisable or unreasonably difficult, the physician may modify the original action plan.) All plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your total cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you and your doctor to find a Health Smart program that is right for you.'' In addition, when any individual participant

receives notification that his or her cholesterol count is 200 or higher, the notification includes the following statement: ''Your plan offers a Health Smart program under which we will work with you and your doctor to try to lower your cholesterol. If you complete this program, you will qualify for a reward. Please contact us at [contact information] to get started.''

(ii) *Conclusion.* In this *Example 1,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain cholesterol level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because the cholesterol program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all participants who do not meet the cholesterol standard a reasonable alternative standard to qualify for the reward. Lastly, the plan also discloses in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard the availability of a reasonable alternative standard (including contact information and the individual's ability to involve his or her personal physician), as required by paragraph (f)(4)(v) of this section. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 2—Cholesterol screening with plan alternative and no opportunity for personal physician involvement. (i) *Facts.* Same facts as *Example 1,* except that the wellness program's physician or nurse practitioner (rather than the individual's personal physician) determines the alternative cholesterol action plan. The plan does not provide an opportunity for a participant's personal physician to modify the action plan if it is not medically appropriate for that individual.

(ii) *Conclusion.* In this *Example 2,* the wellness program does not satisfy the requirements of paragraph (f)(4)(iii) of this section because the program does not accommodate the recommendations of the participant's personal physician with regard to medical appropriateness, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is not reasonably designed under paragraph (f)(4)(iii) of this section and is not available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice also does not provide all the content required under paragraph (f)(4)(v) of this section.

Example 3—Cholesterol screening with plan alternative that can be modified by personal physician. (i) *Facts.* Same facts as *Example 2,* except that if a participant's personal physician disagrees with any part of the action plan, the personal physician may modify the action plan at any time, and the plan discloses this to participants.

(ii) *Conclusion.* In this *Example 3,* the wellness program satisfies the requirements of paragraph (f)(4)(iii) of this section because the participant's personal physician may modify the action plan determined by the wellness program's physician or nurse practitioner at any time if the physician states that the recommendations are not medically appropriate, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is reasonably designed under paragraph (f)(4)(iii) of this section and is available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice, which includes a statement that recommendations of an individual's personal physician will be accommodated, also complies with paragraph (f)(4)(v) of this section.

Example 4—BMI screening with walking program alternative. (i) Facts. A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the participant satisfies an alternative standard that is reasonable taking into consideration the participant's medical situation, is not unreasonably burdensome or impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are considered overweight because you have a BMI of over 26, our Start Walking program will help you lose weight and feel better. We will help you enroll. (**If your doctor says that walking isn't right for you, that's okay too. We will work with you (and, if you wish, your own doctor) to develop a wellness program that is.)'' Participant *E* is unable to achieve a BMI that is 26 or lower within the plan's timeframe and receives notification that complies with paragraph (f)(4)(v) of this section. Nevertheless, it is unreasonably difficult due to a medical condition for *E* to comply with the walking program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the same discount available to *E* that is available to other participants in the BMI program or the alternative walking program, but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain BMI level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because it is reasonably designed to promote health and prevent disease. The program also satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a reasonable alternative standard to qualify for the reward (in this case, a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the walking program is, itself, an activity-only standard and the plan complies with the requirements of paragraph (f)(3) of this section (including the requirement of paragraph (f)(3)(iv) that, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provide a reasonable alternative to those individuals). Moreover, the plan satisfies the requirements of paragraph (f)(4)(v) of this section because it discloses, in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard, the availability of a reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician) to qualify for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 5—BMI screening with alternatives available to either lower BMI or meet personal physician's recommendations. (i) *Facts.* Same facts as *Example 4* except that, with respect to any participant who does not meet the target BMI, instead of a walking program, the participant is expected to reduce BMI by one point. At any point during the year upon request, any individual can obtain a second reasonable alternative standard, which is compliance with the recommendations of the participant's personal physician regarding weight, diet, and exercise as set forth in a treatment plan that the physician recommends or to which the physician agrees. The participant's personal physician is permitted to change or adjust the treatment plan at any time and the option of following the participant's personal physician's recommendations is clearly disclosed.

(ii) *Conclusion.* In this *Example 5,* the reasonable alternative standard to qualify for the reward (the alternative BMI standard requiring a one-point reduction) does not make the program unreasonable under paragraph (f)(4)(iii) or (iv) of this section because the program complies with paragraph (f)(4)(iv)(C)(*4*) of this section by allowing a second reasonable alternative standard to qualify for the reward (compliance with the recommendations of the participant's personal physician, which can be changed or adjusted at any time). Accordingly, the program continues to satisfy the applicable requirements of paragraph (f) of this section.

Example 6—Tobacco use surcharge with smoking cessation program alternative. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we

offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances, and discloses contact information and the individual's option to involve his or her personal physician. The plan pays for the cost of participation in the smoking cessation program. Any participant can avoid the surcharge for the plan year by participating in the program, regardless of whether the participant stops smoking, but the plan can require a participant who wants to avoid the surcharge in a subsequent year to complete the smoking cessation program again.

(ii) *Conclusion.* In this *Example 6,* the premium differential satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v). The program is an outcome-based wellness program because the initial standard for obtaining a reward is dependent on the results of a health risk assessment (a measurement, test, or screening). The program is reasonably designed under paragraph (f)(4)(iii) because the plan provides a reasonable alternative standard (as required under paragraph (f)(4)(iv) of this section) to qualify for the reward to all tobacco users (a smoking cessation program). The plan discloses, in all materials describing the terms of the program, the availability of the reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician). Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 7—Tobacco use surcharge with alternative program requiring actual cessation. (i) *Facts.* Same facts as *Example 6,* except the plan does not provide participant *F* with the reward in subsequent years unless *F* actually stops smoking after participating in the tobacco cessation program.

(ii) *Conclusion.* In this *Example 7,* the program is not reasonably designed under paragraph (f)(4)(iii) of this section and does not provide a reasonable alternative standard as required under paragraph (f)(4)(iv) of this section. The plan cannot cease to provide a reasonable alternative standard merely because the participant did not stop smoking after participating in a smoking cessation program. The plan must continue to offer a reasonable alternative standard whether it is the same or different (such as a new recommendation from *F*'s personal physician or a new nicotine replacement therapy).

Example 8—Tobacco use surcharge with smoking cessation program alternative that is not reasonable. (i) *Facts.* Same facts as *Example 6,* except the plan does not facilitate participant *F*'s enrollment in a smoking cessation program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 8,* the requirement for *F* to find and pay for *F*'s own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(4)(iii) and (iv) of this section and the program fails to satisfy the requirements of paragraph (f) of this section.

(5) *Applicable percentage*—(i) For purposes of this paragraph (f), the applicable percentage is 30 percent, except that the applicable percentage is increased by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(ii) The rules of this paragraph (f)(5) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program with several components, focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the reward for the wellness program, $600, does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the reward for the wellness program (absence of a $1,000 surcharge), does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage ($1,800).

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds the applicable percentage of 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(5) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account.) Accordingly, the health-contingent wellness program offers a reward that does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage.

(6) *Sample language.* The following language, or substantially similar language, can be used to satisfy the notice requirement of paragraphs (f)(3)(v) or (f)(4)(v) of this section: ''Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.''

* * * * *

Subpart C—Other Requirements

■ 6. Section 2590.715–2705 is added to read as follows:

§ 2590.715–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of § 2590.702 of this part.

(b) *Applicability date.* This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014.

Department of Health and Human Services

45 CFR Subtitle A

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR Parts 146 and 147 as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 7. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92) (1996).

Section 146.121 is also issued under secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended (2010).

■ 8. In § 146.121, paragraph (f) is revised to read as follows:

§ 146.121 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f).

(1) *Definitions.* The definitions in this paragraph (f)(1) govern in applying the provisions of this paragraph (f).

(i) *Reward.* Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(ii) *Participatory wellness programs.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program. Examples of participatory wellness programs are:

(A) A program that reimburses employees for all or part of the cost for membership in a fitness center.

(B) A diagnostic testing program that provides a reward for participation in that program and does not base any part of the reward on outcomes.

(C) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, § 147.130 of this subchapter requires benefits for certain preventive health services without the imposition of cost sharing.)

(D) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(E) A program that provides a reward to employees for attending a monthly, no-cost health education seminar.

(F) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 146.122 for rules prohibiting collection of genetic information.)

(iii) *Health-contingent wellness programs.* A health-contingent wellness program is a program that requires an individual to satisfy a standard related to a health factor to obtain a reward (or requires an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward). A health-contingent wellness program may be an activity-only wellness program or an outcome-based wellness program.

(iv) *Activity-only wellness programs.* An activity-only wellness program is a type of health-contingent wellness program that requires an individual to perform or complete an activity related to a health factor in order to obtain a reward but does not require the individual to attain or maintain a specific health outcome. Examples include walking, diet, or exercise programs, which some individuals may be unable to participate in or complete (or have difficulty participating in or completing) due to a health factor, such as severe asthma, pregnancy, or a recent surgery. *See* paragraph (f)(3) of this section for requirements applicable to activity-only wellness programs.

(v) *Outcome-based wellness programs.* An outcome-based wellness program is a type of health-contingent wellness program that requires an individual to attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward. To comply with the rules of this paragraph (f), an outcome-based wellness program typically has two tiers. That is, for individuals who do not attain or maintain the specific health outcome, compliance with an educational program or an activity may be offered as an alternative to achieve the same reward. This alternative pathway, however, does not mean that the overall program, which has an outcome-based component, is not an outcome-based wellness program. That is, if a measurement, test, or screening is used as part of an initial standard and individuals who meet the standard are granted the reward, the program is considered an outcome-based wellness program. For example, if a wellness program tests individuals for specified medical conditions or risk factors (including biometric screening such as testing for high cholesterol, high blood pressure, abnormal body mass index, or high glucose level) and provides a reward to individuals identified as within a normal or healthy range for these medical conditions or risk factors, while requiring individuals who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, complying with a walking or exercise program, or complying with a health care provider's plan of care) to obtain the same reward, the program is an outcome-based wellness program. *See* paragraph (f)(4) of this section for requirements applicable to outcome-based wellness programs.

(2) *Requirement for participatory wellness programs.* A participatory wellness program, as described in paragraph (f)(1)(ii) of this section, does not violate the provisions of this section only if participation in the program is

made available to all similarly situated individuals, regardless of health status.

(3) *Requirements for activity-only wellness programs.* A health-contingent wellness program that is an activity-only wellness program, as described in paragraph (f)(1)(iv) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the activity-only wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the activity-only wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iv), a reward under an activity-only wellness program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iv)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an activity-only wellness program, it must comply with the requirements of this paragraph (f)(3) in the same manner as if it were an initial program standard. (Thus, for example, if a plan or issuer provides a walking program as a reasonable alternative standard to a running program, individuals for whom it is unreasonably difficult due to a medical condition to complete the walking program (or for whom it is medically inadvisable to attempt to complete the walking program) must be provided a reasonable alternative standard to the walking program.) To the extent that a reasonable alternative standard under an activity-only wellness program is, itself, an outcome-based wellness program, it must comply with the requirements of paragraph (f)(4) of this section, including paragraph (f)(4)(iv)(D).

(E) If reasonable under the circumstances, a plan or issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard of an activity-only wellness program. Plans and issuers may seek verification with respect to requests for a reasonable alternative standard for which it is reasonable to determine that medical judgment is required to evaluate the validity of the request.

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Example.* The provisions of this paragraph (f)(3) are illustrated by the following example:

Example. (i) *Facts.* A group health plan provides a reward to individuals who participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to attempt to participate), the plan will waive the walking program requirement and provide the reward. All

materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* In this *Example,* the program satisfies the requirements of paragraph (f)(3)(iii) of this section because the walking program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the reward under the program is available to all similarly situated individuals. It accommodates individuals for whom it is unreasonably difficult to participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them with the reward even if they do not participate in the walking program (that is, by waiving the condition). The plan also complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

(4) *Requirements for outcome-based wellness programs.* A health-contingent wellness program that is an outcome-based wellness program, as described in paragraph (f)(1)(v) of this section, does not violate the provisions of this section only if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for the outcome-based wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage (as defined in paragraph (f)(5) of this section) of the total cost of employee-only coverage under the plan. However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(4)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(iii) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To ensure that an outcome-based wellness program is reasonably designed to improve health and does not act as a subterfuge for underwriting or reducing benefits based on a health factor, a reasonable alternative standard to qualify for the reward must be provided to any individual who does not meet the initial standard based on a measurement, test, or screening that is related to a health factor, as explained in paragraph (f)(4)(iv) of this section.

(iv) *Uniform availability and reasonable alternative standards.* The full reward under the outcome-based wellness program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(4)(iv), a reward under an outcome-based wellness program is not available to all similarly situated individuals for a period unless the program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual who does not meet the initial standard based on the measurement, test, or screening, as described in this paragraph (f)(4)(iv).

(B) While plans and issuers are not required to determine a particular reasonable alternative standard in advance of an individual's request for one, if an individual is described in paragraph (f)(4)(iv)(A) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived.

(C) All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (instead of requiring an individual to find such a program unassisted), and may not require an individual to pay for the cost of the program.

(*2*) The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).

(*3*) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(*4*) If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(D) To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, an activity-only wellness program, it must comply with the requirements of paragraph (f)(3) of this section in the same manner as if it were an initial program standard. To the extent that a reasonable alternative standard under an outcome-based wellness program is, itself, another outcome-based wellness program, it must comply with the requirements of this paragraph (f)(4), subject to the following special rules:

(*1*) The reasonable alternative standard cannot be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances. For example, if the initial standard is to achieve a BMI less than 30, the reasonable alternative standard cannot be to achieve a BMI less than 31 on that same date. However, if the initial standard is to achieve a BMI less than 30, a reasonable alternative standard for the individual could be to reduce the individual's BMI by a small amount or small percentage, over a realistic period of time, such as within a year.

(*2*) An individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the plan or issuer, but only if the physician joins in the request. The individual can make a request to involve a personal physician's recommendations at any time and the personal physician can adjust the physician's recommendations at any time, consistent with medical appropriateness.

(E) It is not reasonable to seek verification, such as a statement from an individual's personal physician, under an outcome-based wellness program that a health factor makes it

unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard as a condition of providing a reasonable alternative to the initial standard. However, if a plan or issuer provides an alternative standard to the otherwise applicable measurement, test, or screening that involves an activity that is related to a health factor, then the rules of paragraph (f)(3) of this section for activity-only wellness programs apply to that component of the wellness program and the plan or issuer may, if reasonable under the circumstances, seek verification that it is unreasonably difficult due to a medical condition for an individual to perform or complete the activity (or it is medically inadvisable to attempt to perform or complete the activity). (For example, if an outcome-based wellness program requires participants to maintain a certain healthy weight and provides a diet and exercise program for individuals who do not meet the targeted weight, a plan or issuer may seek verification, as described in paragraph (f)(3)(iv)(D) of this section, if reasonable under the circumstances, that a second reasonable alternative standard is needed for certain individuals because, for those individuals, it would be unreasonably difficult due to a medical condition to comply, or medically inadvisable to attempt to comply, with the diet and exercise program, due to a medical condition.)

(v) *Notice of availability of reasonable alternative standard.* The plan or issuer must disclose in all plan materials describing the terms of an outcome-based wellness program, and in any disclosure that an individual did not satisfy an initial outcome-based standard, the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining a reasonable alternative standard and a statement that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required. Sample language is provided in paragraph (f)(6) of this section, as well as in certain examples of this section.

(vi) *Examples.* The provisions of this paragraph (f)(4) are illustrated by the following examples:

Example 1—Cholesterol screening with reasonable alternative standard to work with personal physician. (i) *Facts.* A group health plan offers a reward to participants who achieve a count under 200 on a total cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan allows the participant to develop an alternative cholesterol action plan in conjunction with the participant's personal physician that may include recommendations for medication and additional screening. The plan allows the physician to modify the standards, as medically necessary, over the year. (For example, if a participant develops asthma or depression, requires surgery and convalescence, or some other medical condition or consideration makes completion of the original action plan inadvisable or unreasonably difficult, the physician may modify the original action plan.) All plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your total cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you and your doctor to find a Health Smart program that is right for you.'' In addition, when any individual participant receives notification that his or her cholesterol count is 200 or higher, the notification includes the following statement: ''Your plan offers a Health Smart program under which we will work with you and your doctor to try to lower your cholesterol. If you complete this program, you will qualify for a reward. Please contact us at [contact information] to get started.''

(ii) *Conclusion.* In this *Example 1,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain cholesterol level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because the cholesterol program is reasonably designed to promote health and prevent disease. The program satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all participants who do not meet the cholesterol standard a reasonable alternative standard to qualify for the reward. Lastly, the plan also discloses in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard the availability of a reasonable alternative standard (including contact information and the individual's ability to involve his or her personal physician), as required by paragraph (f)(4)(v) of this section. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 2—Cholesterol screening with plan alternative and no opportunity for personal physician involvement. (i) *Facts.* Same facts as *Example 1,* except that the wellness program's physician or nurse practitioner (rather than the individual's personal physician) determines the alternative cholesterol action plan. The plan does not provide an opportunity for a participant's personal physician to modify the action plan if it is not medically appropriate for that individual.

(ii) *Conclusion.* In this *Example 2,* the wellness program does not satisfy the requirements of paragraph (f)(4)(iii) of this section because the program does not accommodate the recommendations of the participant's personal physician with regard to medical appropriateness, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is not reasonably designed under paragraph (f)(4)(iii) of this section and is not available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice also does not provide all the content required under paragraph (f)(4)(v) of this section.

Example 3—Cholesterol screening with plan alternative that can be modified by personal physician. (i) *Facts.* Same facts as *Example 2,* except that if a participant's personal physician disagrees with any part of the action plan, the personal physician may modify the action plan at any time, and the plan discloses this to participants.

(ii) *Conclusion.* In this *Example 3,* the wellness program satisfies the requirements of paragraph (f)(4)(iii) of this section because the participant's personal physician may modify the action plan determined by the wellness program's physician or nurse practitioner at any time if the physician states that the recommendations are not medically appropriate, as required under paragraph (f)(4)(iv)(C)(*3*) of this section. Thus, the program is reasonably designed under paragraph (f)(4)(iii) of this section and is available to all similarly situated individuals under paragraph (f)(4)(iv) of this section. The notice, which includes a statement that recommendations of an individual's personal physician will be accommodated, also complies with paragraph (f)(4)(v) of this section.

Example 4—BMI screening with walking program alternative. (i) *Facts.* A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the participant satisfies an alternative standard that is reasonable taking into consideration the participant's medical situation, is not unreasonably burdensome or impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are considered overweight because you have a BMI of over 26, our Start Walking program will help you lose weight and feel better. We will help you enroll. (**If your doctor says that walking

isn't right for you, that's okay too. We will work with you (and, if you wish, your own doctor) to develop a wellness program that is.)'' Participant *E* is unable to achieve a BMI that is 26 or lower within the plan's timeframe and receives notification that complies with paragraph (f)(4)(v) of this section. Nevertheless, it is unreasonably difficult due to a medical condition for *E* to comply with the walking program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the same discount available to *E* that is available to other participants in the BMI program or the alternative walking program, but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program is an outcome-based wellness program because the initial standard requires an individual to attain or maintain a specific health outcome (a certain BMI level) to obtain a reward. The program satisfies the requirements of paragraph (f)(4)(iii) of this section because it is reasonably designed to promote health and prevent disease. The program also satisfies the requirements of paragraph (f)(4)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a reasonable alternative standard to qualify for the reward (in this case, a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the walking program is, itself, an activity-only standard and the plan complies with the requirements of paragraph (f)(3) of this section (including the requirement of paragraph (f)(3)(iv) that, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provide a reasonable alternative to those individuals). Moreover, the plan satisfies the requirements of paragraph (f)(4)(v) of this section because it discloses, in all materials describing the terms of the program and in any disclosure that an individual did not satisfy the initial outcome-based standard, the availability of a reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician) to qualify for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 5—BMI screening with alternatives available to either lower BMI or meet personal physician's recommendations. (i) *Facts.* Same facts as *Example 4* except that, with respect to any participant who does not meet the target BMI, instead of a walking program, the participant is expected to reduce BMI by one point. At any point during the year upon request, any individual can obtain a second reasonable alternative standard, which is compliance with the recommendations of the participant's personal physician regarding weight, diet, and exercise as set forth in a treatment plan that the physician recommends or to which the physician agrees. The participant's personal physician is permitted to change or adjust the treatment plan at any time and the option of following the participant's personal physician's recommendations is clearly disclosed.

(ii) *Conclusion.* In this *Example 5,* the reasonable alternative standard to qualify for the reward (the alternative BMI standard requiring a one-point reduction) does not make the program unreasonable under paragraph (f)(4)(iii) or (iv) of this section because the program complies with paragraph (f)(4)(iv)(C)(*4*) of this section by allowing a second reasonable alternative standard to qualify for the reward (compliance with the recommendations of the participant's personal physician, which can be changed or adjusted at any time). Accordingly, the program continues to satisfy the applicable requirements of paragraph (f) of this section.

Example 6—Tobacco use surcharge with smoking cessation program alternative. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances, and discloses contact information and the individual's option to involve his or her personal physician. The plan pays for the cost of participation in the smoking cessation program. Any participant can avoid the surcharge for the plan year by participating in the program, regardless of whether the participant stops smoking, but the plan can require a participant who wants to avoid the surcharge in a subsequent year to complete the smoking cessation program again.

(ii) *Conclusion.* In this *Example 6,* the premium differential satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v). The program is an outcome-based wellness program because the initial standard for obtaining a reward is dependent on the results of a health risk assessment (a measurement, test, or screening). The program is reasonably designed under paragraph (f)(4)(iii) because the plan provides a reasonable alternative standard (as required under paragraph (f)(4)(iv) of this section) to qualify for the reward to all tobacco users (a smoking cessation program). The plan discloses, in all materials describing the terms of the program, the availability of the reasonable alternative standard (including contact information and the individual's option to involve his or her personal physician). Thus, the program satisfies the requirements of paragraphs (f)(4)(iii), (iv), and (v) of this section.

Example 7—Tobacco use surcharge with alternative program requiring actual cessation. (i) *Facts.* Same facts as *Example 6,* except the plan does not provide participant *F* with the reward in subsequent years unless *F* actually stops smoking after participating in the tobacco cessation program.

(ii) *Conclusion.* In this *Example 7,* the program is not reasonably designed under paragraph (f)(4)(iii) of this section and does not provide a reasonable alternative standard as required under paragraph (f)(4)(iv) of this section. The plan cannot cease to provide a reasonable alternative standard merely because the participant did not stop smoking after participating in a smoking cessation program. The plan must continue to offer a reasonable alternative standard whether it is the same or different (such as a new recommendation from *F*'s personal physician or a new nicotine replacement therapy).

Example 8—Tobacco use surcharge with smoking cessation program alternative that is not reasonable. (i) *Facts.* Same facts as *Example 6,* except the plan does not facilitate participant *F*'s enrollment in a smoking cessation program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 8,* the requirement for *F* to find and pay for *F*'s own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(4)(iii) and (iv) of this section and the program fails to satisfy the requirements of paragraph (f) of this section.

(5) *Applicable percentage*—(i) For purposes of this paragraph (f), the applicable percentage is 30 percent, except that the applicable percentage is increased by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(ii) The rules of this paragraph (f)(5) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program with several components, focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the reward for the wellness program, $600, does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the

coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the reward for the wellness program (absence of a $1,000 surcharge), does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed the applicable percentage of 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage ($1,800).

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds the applicable percentage of 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(5) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account.) Accordingly, the health-contingent wellness program offers a reward that does not exceed the applicable percentage of 30 percent of the total annual cost of employee-only coverage.

(6) *Sample language.* The following language, or substantially similar language, can be used to satisfy the notice requirement of paragraphs (f)(3)(v) or (f)(4)(v) of this section: ''Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.''

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL INSURANCE MARKETS

■ 9. The authority citation for Part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended (2010).

■ 10. Section 147.110 is added to read as follows:

§ 147.110 Prohibiting discrimination against participants, beneficiaries, and individuals based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group or individual health insurance coverage must comply with all the requirements under 45 CFR 146.121 applicable to a group health plan and a health insurance issuer offering group health insurance coverage. Accordingly, with respect to an issuer offering health insurance coverage in the individual market, the issuer is subject to the requirements of § 146.121 to the same extent as an issuer offering group health insurance coverage, except the exception contained in § 146.121(f) (concerning nondiscriminatory wellness programs) does not apply.

(b) *Applicability date.* This section is applicable to group health plans and health insurance issuers offering group or individual health insurance coverage for plan years (in the individual market, policy years) beginning on or after January 1, 2014. See § 147.140, which provides that the rules of this section do not apply to grandfathered health plans that are individual health insurance coverage.

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CFR PARTS AFFECTED DURING JUNE

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H.R. 360/P.L. 113–11
To award posthumously a Congressional Gold Medal to Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley to commemorate the lives they lost 50 years ago in the bombing of the Sixteenth Street Baptist Church, where these 4 little Black girls' ultimate sacrifice served as a catalyst for the Civil Rights Movement. (May 24, 2013; 127 Stat. 446)
Last List May 22, 2013

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