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OFFICE OF THE FEDERAL REGISTER

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

WHEN: Tuesday, May 14, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0030]

RIN 0579–AD43

Horse Protection Act; Requiring Horse Industry Organizations To Assess and Enforce Minimum Penalties for Violations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correcting amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on June 7, 2012, and effective on July 9, 2012, we amended the horse protection regulations to require horse industry organizations or associations that license Designated Qualified Persons to assess and enforce minimum penalties for violations of the Horse Protection Act. This document corrects an error in that final rule.

DATES: Effective May 9, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Rachel Cezar, Horse Protection National Coordinator, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3746.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on June 7, 2012 (77 FR 33607–33619, Docket No. APHIS–2011–0030), and effective on July 9, 2012, we amended the horse protection regulations in 9 CFR part 11 to require horse industry organizations or associations that license Designated Qualified Persons to assess and enforce minimum penalties for violations of the Horse Protection Act. We established the minimum penalties in a new § 11.25.

As part of this change, we amended paragraph (d) of § 11.21 to indicate that horse industry organizations or associations are required to assess and enforce penalties for violations in accordance with § 11.25. Before the publication of the June 2012 final rule, this paragraph also indicated that horse industry organizations or associations had to report all violations in accordance with § 11.20(b)(3). However, in revising § 11.21(d) to reflect the new minimum penalty requirements, we erroneously changed the paragraph reference in the existing reporting requirement to § 11.20(b)(4), which does not exist. This document corrects that error.

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 11 is corrected by making the following correcting amendment:

PART 11—HORSE PROTECTION REGULATIONS

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

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

§ 11.21 [Amended]

■ 2. In § 11.21, paragraph (d), the citation "§ 11.20(b)(4)" is removed and the citation "§ 11.20(b)(3)" is added in its place.

Done in Washington, DC, this 3rd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11028 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1161; Directorate Identifier 2011–NM–277–AD; Amendment 39–17442; AD 2013–09–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. That AD currently requires a one-time mid-frequency eddy current (MFEC) inspection, a low-frequency eddy current (LFEC) inspection, and a detailed inspection for damage or cracking of stringer S–4L and S–4R lap joints and stringer clips between body station (BS) 540 and BS 727, and follow-on inspections and repair if necessary. This new AD instead requires repetitive external eddy current inspections for cracking of certain fuselage crown lap joints, and corrective actions if necessary; internal eddy current and detailed inspections for cracking of certain fuselage crown lap joints, and repair if necessary; and detailed inspections of certain stringer clips, and replacement with new stringer clips if necessary. This AD also adds airplanes to the applicability. This AD was prompted by reports of cracking of the lap joint lower row. We are issuing this AD to detect and correct cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

DATES: This AD is effective June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in the AD as of June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 17, 2002 (67 FR 17917, April 12, 2002).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–08–15, Amendment 39–13128 (68 FR 20341, April 25, 2003). That AD applies to the specified products. The NPRM published in the **Federal Register** on November 7, 2012 (77 FR 66757). That NPRM proposed to require repetitive external eddy current inspections for cracking of certain fuselage crown lap joints and corrective actions; internal eddy current and detailed inspections for cracking of certain fuselage crown lap joints, and repair if necessary; and detailed inspections of certain stringer clips, and replacement with new stringer clips if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 66757, November 7, 2012) and the FAA's response to each comment.

Support of NPRM (77 FR 66757, November 7, 2012)

Ann Harrison stated that she supports the NPRM (77 FR 66757, November 7, 2012).

Request for Clarification of Inspection Requirements

Boeing and Lufthansa requested clarification that the repetitive inspections referred to in paragraph (i)(3) of the NPRM (77 FR 66757, November 7, 2012) are external inspections. The commenters noted that the internal inspection specified in Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, is a one-time inspection. Lufthansa suggested we delete paragraph (i)(3) from the NPRM. Boeing suggested we revise paragraph (i)(3) of the NPRM to state that the repetitive inspection is external.

We agree that clarification is needed. The internal inspection is required only once prior to the accomplishment of the lap splice modification. Since the external inspection specified in paragraph (g) of this AD is repetitive, we have deleted paragraph (i)(3) of this AD.

Request To Use Previous Alternative Methods of Compliance (AMOCs)

Alaska Airlines requested that we change the NPRM (77 FR 66757, November 7, 2012) to state that "AMOCs approved previously in accordance with AD 2003–08–15 [(68 FR 20341, April 25, 2003)] and AD 2004–18–06 [(69 FR 54206, September 8, 2004)] are approved as AMOCs for the corresponding provisions of this AD." Alaska Airlines stated that there is a global AMOC for the PEMCO main deck cargo door installation in accordance with supplemental type certificate (STC) SA2969SO (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2A10F5D4090A534686257A79006F0F97?OpenDocument&Highlight=stcsa2969so*). The commenter stated that since the STC is not a repair, this global AMOC should be specified in paragraph (n) of the NPRM.

We agree with the request to include in the AD previously approved AMOCs for the corresponding requirements of this AD. Installation of the PEMCO main deck cargo door done in accordance with STC SA2969SO (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2A10F5D4090A534686257A79006F0F97?OpenDocument&Highlight=stcsa2969so*) involves installation of an external doubler onto the existing skin and lap splices from stringer S–3R to S–23L between body station (BS) 312 and BS 500B. We have added new paragraph (n)(6) to this AD to state that installation of STC SA2969SO is approved as an AMOC to the corresponding requirements of paragraphs (g) and (i) of this AD from stringer S–3R to S–23L between BS 312 and BS 500B only.

Boeing requested that we revise paragraph (n)(4) of the NPRM (77 FR 66757, November 7, 2012) to add references to paragraphs (g) and (h) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), in order to provide approval for lap joint modifications that have been approved as AMOCs to paragraphs (g) and (h) of AD 2002–07–08.

We agree with the request. Lap joints modified prior to the effective date of this AD that have been approved as an AMOC for paragraphs (g) and (h) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), should not be subject to the lap joint inspections required by this AD. We have added references to paragraphs (g) and (h) of AD 2002–07–08 to paragraph (n)(4) of this AD.

STC Winglet Comment

Aviation Partners Boeing stated that the installation of winglets per STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the accomplishment of the manufacturer's service instructions.

We have added paragraph (c)(2) to this AD to state that installation of STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (n) of this AD.

Request To Clarify Locations of Optional Internal Inspections

Boeing requested that we include further clarification in paragraph (h) of the NPRM (77 FR 66757, November 7, 2012) indicating that the optional internal inspections are for cracks between tear straps only. Boeing stated that paragraph (g) of the NPRM inspects for cracking at tear strap locations and

between tear straps. Boeing also stated that paragraph (h) of the NPRM provides an optional inspection for the inspections required by paragraph (g), but only for cracking between tear straps. Boeing added that it is important to clarify that the inspections required by paragraph (h) of the NPRM are only applicable at locations between tear straps.

We agree that the requested wording will further clarify the location for the optional internal inspections specified in paragraph (h) of this AD. We have added the phrase "between tear straps" to the beginning of the first sentence of paragraph (h) of this AD.

Boeing also requested that we clarify paragraph (j) of the NPRM (77 FR 66757, November 7, 2012) to indicate that the optional internal inspections are for cracks at tear strap locations. Boeing added that the wording in the NPRM only allows this confirmation when accomplishing the internal inspections specified in paragraph (i) of the NPRM. Boeing stated that Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, specifies that this optional inspection at tear strap locations is for cracks found during either the external inspection specified in paragraph (g) of the NPRM, or the internal inspections specified in paragraph (i) of the NPRM.

We agree that adding a reference to the tear strap location near the beginning of the first sentence of paragraph (j) of this AD will clarify the requirement. We have revised paragraph (j) of this AD accordingly. We have also added a reference to paragraph (g) of this AD, as requested by the commenter.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 66757, November 7, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 66757, November 7, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 307 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Internal inspection	Up to 303 work-hours × $85 per hour = $25,755	$0	$25,755	307	$7,906,785
External inspection	Up to 10 work-hours × $85 per hour = $850	0	850	307	260,950

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–08–15, Amendment 39–13128 (68 FR 20341, April 25, 2003), and adding the following new AD:

2013–09–01 The Boeing Company: Amendment 39–17442; Docket No. FAA–2012–1161; Directorate Identifier 2011–NM–277–AD.

(a) Effective Date

This AD is effective June 13, 2013.

(b) Affected ADs

This AD supersedes AD 2003–08–15, Amendment 39–13128 (68 FR 20341, April 25, 2003).

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes; certificated in any category; as specified in Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval

request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking of the lap joint lower row. We are issuing this AD to detect and correct cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

(f) Compliance

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

(g) External Crown Lap Joint Inspection and Repair

For airplanes on which the lap splice modification specified in AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), has not been accomplished, except as required by paragraphs (l)(1) and (l)(2) of this AD: At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, do an external eddy current inspection for cracking in the crown lap joints, except as provided by paragraphs (h) and (j) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012. At the intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, repeat the inspections, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012. If any cracking is found in a lap joint, before further flight, repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(h) Optional Internal Inspections for Mid-bay Fastener Locations

As an option to confirm cracks found between tear straps during the inspections required by paragraph (g) of this AD, do an internal mid-frequency eddy current (MFEC) inspection for cracking in the lap joint fastener row between tear straps of the crown lap and do a detailed inspection of the lap joint lower fastener row for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(i) Internal Crown Lap Joint Inspection and Repair

For airplanes on which the lap splice modification specified in AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), has not been accomplished: At the times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, except as required by paragraphs (l)(1) and (l)(2) of this AD, do an internal MFEC, low frequency eddy current (LFEC), and detailed inspection for cracking in the crown lap joints and stringer clips, except as provided by paragraph (j) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(1) If any cracking is found in any lap joint, before further flight, repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(2) If any cracking is found in any stringer clip, before further flight, replace the stringer clip with a new stringer clip, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(j) Optional Inspections for Tear Strap Locations Only

As an option to confirm cracks found at tear strap locations while doing the inspections required by paragraph (g) or (i) of this AD, do an open-hole inspection for cracking at the tear strap locations, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(k) Terminating Action

(1) Accomplishing a repair of a crown lap joint in accordance with Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, terminates the inspections required by paragraphs (g) and (i) of this AD for the repaired area only.

(2) Accomplishing the modification of the crown lap joints in accordance with any of the service bulletins specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD terminates the inspections required by paragraphs (g) and (i) of this AD for the modified area only.

(i) Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999.

(ii) Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001.

(iii) Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(l) Exceptions to Service Information

(1) Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, specifies a compliance time "from the Revision 1 date of this service bulletin," this AD requires a compliance time "after the effective date of this AD."

(2) Where the "Condition" column, in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012, specifies airplanes with certain flight cycles "at the Revision 1 date of this service bulletin," for this AD the condition is for airplanes with corresponding flight cycles "as of the effective date of this AD."

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), (i), and (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1255, Revision 1, dated November 7, 2011, which is not incorporated by reference in this AD.

(n) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for paragraphs (a), (b), (c), (d), (e), (g), and (h) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), before the effective date of this AD, are approved for the corresponding requirements of paragraphs (g), (i), and (k) of this AD.

(5) As of the effective date of this AD, any AMOCs approved for paragraphs (g) and (i) of this AD are approved as AMOCs for the corresponding requirements of paragraphs (a), (b), (c), (d), and (e) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002).

(6) As of the effective date of this AD, installation of STC SA2969SO (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2A10F5D4090A534686257A79006F0F97?OpenDocument&Highlight=stc sa2969so*) is approved as an AMOC for the corresponding requirements of paragraphs (g) and (i) of this AD from stringer S–3R to S–23L between body station (BS) 312 and BS 500B only.

(o) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) The following service information was approved for IBR on June 13, 2013.

(i) Boeing Alert Service Bulletin 737–53A1255, Revision 2, dated August 7, 2012.

(ii) Reserved.

(4) The following service information was approved for IBR on May 17, 2002 (67 FR 17917, April 12, 2002).

(i) Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999.

(ii) Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001.

(iii) Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(5) 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.*

(6) 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.

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

Issued in Renton, Washington, on April 18, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10005 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0845; Directorate Identifier 2012–CE–013–AD; Amendment 39–17431; AD 2013–08–14]

RIN 2120–AA64

Airworthiness Directives; Revo, Incorporated Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes. That AD currently requires a one-time, dye-penetrant inspection of the horizontal stabilizer attachment fitting and repetitive visual inspections of the fitting for any evidence of fretting, cracking, or corrosion (with necessary replacement and modification); replacement of the fitting upon reaching the 850-hours time-in-service (TIS) safe life; and reporting to the FAA the results of the initial inspection and any cracks found on repetitive inspections. This new AD requires the same actions of AD 2005–12–02 except using revised service documents and procedures, adds Model COLONIAL C–1 airplanes to the Applicability, and adds an optional terminating action for the requirements. This AD was prompted by a report from Revo, Incorporated that, while the drawing numbers are different, the attachment fittings on the Model COLONIAL C–1 airplanes are identical in every other respect to those installed on the airplanes referenced in AD 2005–12–02. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD as of July 8, 2005 (70 FR 33820, June 10, 2005).

ADDRESSES: For service information identified in this AD, contact Revo, Incorporated, 1396 Grandview Boulevard, Kissimmee, FL 34744; telephone: (407) 847–8080; email: *support@teamlake.com;* Lake Central Air Services, Muskoka Airport, R. R. #1, Gravenhurst, Ontario, Canada P1P 1R1; telephone: (705) 687–4343; email: *akecent@muskoka.com;* Internet: *www.lakecentral.com;* and Robert L. Copeland (XLS Co., LLC), 418B Bartow Municipal Airport, Bartow, FL 33830; FAA Aerospace Engineer (Hal Horsburgh), telephone: (404) 474–5553. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Hal Horsburgh, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5553; fax: (404) 474–5606; email: *hal.horsburgh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–12–02, amendment 39–14118 (70 FR 33820, June 10, 2005). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 16, 2012 (77 FR 49389). That NPRM proposed to require the same actions of AD 2005–12–02, add Model COLONIAL C–1 airplanes to the Applicability, and add an optional terminating action for the requirements.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 49389, August 16, 2012) or on the determination of the cost to the public.

We did notice that the date for XLS Company's instructions for continued airworthiness was incorrect. We also identified the need to clarify giving credit for work done following previous service documents and procedures so the actions would not be unnecessarily duplicated.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for a typographical error in the date for XLS Company's instructions for continued airworthiness, clarification of credit allowed for work done following previous service documents and procedures, and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (August 16, 2012, 77 FR 49389) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already

proposed in the NPRM (August 16, 2012, 77 FR 49389).

Costs of Compliance

We estimate that this AD affects 253 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the horizontal stabilizer attachment fitting.	24 work-hours × $85 per hour = $2,040 ..	Not Applicable	$2,040	$516,120
Measure the gap between the horizontal skin and the horizontal stabilizer attachment fitting; trim the skin to provide gap.	1 work-hour × $85 per hour = $85	Not Applicable	85	21,505

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the horizontal stabilizer attachment fitting	24 work-hours × $85 per hour = $2,040	$761	$2,801

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

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

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

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

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

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

Paperwork Reduction Act Burden Statement

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–12–02, Amendment 39–10524 (70 FR 33820, June 10, 2005), and adding the following new AD:

2013–08–14 Revo, Incorporated: Amendment 39–17431; Docket No. FAA–2012–0845; Directorate Identifier 2012–CE–013–AD.

(a) Effective Date

This airworthiness directive (AD) is effective June 13, 2013.

(b) Affected ADs

This AD supersedes AD 2005–12–02, Amendment 39–10524 (70 FR 33820, June 10, 2005).

(c) Applicability

This AD applies to the following Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes, all serial numbers, that are certificated in any category, and have horizontal stabilizer attachment fittings part number (P/N) 1–2200–14, 2200–14, or 2–2200–21 installed.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55: Stabilizers.

(e) Unsafe Condition

This AD was prompted by information from Revo, Incorporated that while the drawing numbers are different, the attachment fittings on the Model COLONIAL C–1 airplanes are identical in every other respect to those installed on the airplanes referenced in AD 2005–12–02 (70 FR.33820, June 10, 2005). We are issuing this AD to require the same actions of AD 2005–12–02, add the Model COLONIAL C–1 airplanes to the Applicability, and add an optional terminating action for the requirements. We are adopting this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Credit for Actions Done Following Previous Service Information

(1) This AD provides credit for the actions in paragraph (h)(1) of this AD, if the dye penetrant inspection was done before the effective date of this AD, following Revo Inc. Service Bulletin B–78 R2, Revision 2, dated October 26, 2011; Revo Inc. Service Bulletin B–78 R1, Revision 1, dated July 26, 2005; or Revo Inc. Service Bulletin B–78, dated April 3, 1998. However; the horizontal stabilizer attachment fitting must have been removed from the airplane during the inspection.

(2) This AD provides credit for the actions in paragraphs (h)(2) and (j)(1) of this AD, if the horizontal stabilizer attachment fitting has been replaced before the effective date of this AD, following Revo Inc. Service Bulletin B–78 R2, Revision 2, dated October 26, 2011; Revo Inc. Service Bulletin B–78 R1, Revision 1, dated July 26, 2005; or Revo Inc. Service Bulletin B–78, dated April 3, 1998.

(h) Dye Penetrant Inspection on the Horizontal Stabilizer Attachment Fitting

(1) *For airplanes with less than 825 hours time-in-service (TIS) on any horizontal stabilizer attachment fitting:* Remove the horizontal stabilizer attachment (P/N 1–2200–14, 2200–14, or 2–2200–21) from the airplane and do a one-time dye-penetrant inspection for cracks, fretting, or corrosion using the applicable compliance times and service information stated below.

(i) *For COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes:* Within the next 25 hours TIS after July 8, 2005 (the effective date of AD 2005–12–02 (70 FR 33820, June 10, 2005)). Follow Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012; Revo Inc. Service Bulletin B–78 R2, Revision 2, dated October 26, 2011; Revo Inc. Service Bulletin B–78 R1, Revision 1, dated July 26, 2005; or Revo Inc. Service Bulletin B–78, dated April 3, 1998 (which was incorporated by reference in AD 2005–12–02 and is retained in this AD).

(ii) *For COLONIAL C–1 airplanes:* Within the next 25 hours TIS after June 13, 2013 (the effective date of this AD). Follow Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012.

(2) If cracks, fretting, or corrosion is found during the inspection required in paragraph (h)(1) of this AD, before further flight, replace the horizontal stabilizer attachment with an airworthy P/N 2–2200–21, P/N 1–2200–14, or 2200–14 following Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012. After replacement with an airworthy part, the repetitive inspections specified in paragraph (i) of this AD and the repetitive replacements specified in paragraph (j) of this AD are still required.

(3) For the purposes of this AD, an airworthy part is defined as a new part or a used part that has less than 850 hours TIS and has been inspected following paragraph (h)(1) of this AD and found free of cracks, fretting, or corrosion before installation.

(i) Repetitive Inspections of the Horizontal Stabilizer Attachment Fitting

(1) Within 50 hours TIS or 12 months, whichever occurs first, after the dye-penetrant inspection required in paragraph (h)(1) of this AD or after replacement of the fitting required in paragraphs (h)(2), (i)(2), or (j) of this AD and repetitively thereafter at intervals not to exceed 50 hours TIS or 12 months, whichever occurs first, visually inspect the horizontal stabilizer attachment fitting using the following procedures:

(i) Move the elevator as required to see the fitting, ensuring that the aft face of the fitting is visible.

(ii) Clean the fitting. Pay special attention to the radius edges of the fitting just outboard of the fitting ear.

(iii) Visually inspect the fitting for cracks using a flashlight (a small magnifying glass or borescope is recommended). Pay special attention again to the radius edges just outboard of the fitting ear. Also, inspect as far forward on the edge that is possible because some cracks progress along the forward face of the fitting that is mostly hidden by the horizontal stabilizer rear beam.

(iv) Reference the sketch on page 1 of Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012, to see where the crack is likely to begin.

(2) If any cracks are found during any of the inspections required in paragraph (i) of this AD, before further flight, replace the fitting with an airworthy part following Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012.

(3) For the purposes of this AD, an airworthy part is defined as a new part or a used part that has less than 850 hours TIS and has been inspected following paragraph (h)(1) of this AD and found free of cracks, fretting, or corrosion before installation.

(j) Replace the Horizontal Stabilizer Attachment Fitting

(1) *For COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes:* Before or when the horizontal stabilizer attachment fitting accumulates 850 hours TIS or within 25 hours TIS after July 8, 2005 (the effective date of AD 2005–12–02 (70 FR 33820, June 10, 2005)), whichever occurs later, and repetitively thereafter at intervals not to exceed 850 hours TIS replace the horizontal stabilizer attachment fitting P/N 1–2200–14, 2200–14, or 2–2200–21 with an airworthy part. Follow Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012; Revo Inc. Service Bulletin B–78 R2, Revision 2, dated October 26, 2011; Revo Inc. Service Bulletin B–78 R1, Revision 1, dated July 26, 2005; or Revo Inc. Service Bulletin B–78, dated April 3, 1998 (which was incorporated by reference in AD 2005–12–02 and is retained in this AD).

(2) *For COLONIAL C–1 airplanes:* Before or when the horizontal stabilizer attachment fitting accumulates 850 hours TIS or within 25 hours TIS after June 13, 2013 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 850 hours TIS replace the horizontal stabilizer attachment fitting P/N 1–2200–14, 2200–14, or 2–2200–21 with an airworthy part following Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012.

(3) For the purposes of this AD, an airworthy part is defined as a new part or a used part that has less than 850 hours TIS and has been inspected following paragraph (h)(1) of this AD and found free of cracks, fretting, or corrosion before installation.

(k) Optional Terminating Action

You may at any time install the following supplemental type certificates (STC) to terminate the requirements of this AD; however, the actions required by the limitations section in the instructions for continued airworthiness for the STCs still apply:

(1) Lake Central Aircraft Services Lake Amphibian stabilizer fitting (STC SA02153NY) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1doe07f8e33da91486257093004f73b8/$FILE/SA02153NY.pdf*) following Lake Central Aircraft Services Lake Amphibian Stabilizer Fitting LC–2200–21 Installation Instructions, Rev B, dated August 26, 2005; and Lake Central Air Services Stabilizer Fitting LC–2200–21 Maintenance Manual Supplement Document MS–LC–2200–21, Rev B, dated August 26, 2005; or

(2) Robert L. Copeland (XLS Co., LLC) horizontal stabilizer support fitting system (STC SA03217AT) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/93cfc6dba1fdeadb862571080056c0c2/$FILE/SA03217AT.pdf*) following XLS Company, LLC Report XLS–2–2200–21–500, Installation Instructions for XLS Co., LLC Horizontal Stabilizer Support Fitting System for Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake–4P, and Lake LA–4–200 Aircraft, Revision B, dated November 18, 2005; and XLS Company, LLC Report XLS–2–2200–21–ICA, Instructions for Continued Airworthiness for XLS Co., LLC Horizontal Stabilizer Support Fitting System for Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake–4P, and Lake LA–4–200 Aircraft, dated October 15, 2005.

Note 1 to paragraph (k)(2) of this AD: New parts are not currently available for STC SA03217AT (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/93cfc6dba1fdeadb862571080056c0c2/$FILE/SA03217AT.pdf*); however, the STC number has been included here if the parts become available later.

(l) Measure the Gap Between the Horizontal Skin and the Horizontal Stabilizer Attachment Fitting; Trim the Skin to Provide Gap

(1) Measure the gap between the horizontal skin and the horizontal stabilizer attachment fitting (P/N 1–2200–14, 2200–14, or 2–2200–21). If gap is less than 1/16 inch, trim the skin to provide at least 1/16 inch gap.

(2) After any replacement of the fitting required by paragraphs (h)(2), (i)(2), or (j) of this AD, before further flight, do the actions in paragraph (l)(1) of this AD.

(m) Report the Results of the Initial Inspection

Using the form in Appendix 1 of this AD, report the results of the inspections required in paragraphs (h) and (i) of this AD. Send the results to the FAA using the following contact information: Hal Horsburgh, FAA Atlanta Aircraft Certification Office (ACO), 1701 Columbia Ave., College Park, GA 30337; fax (404) 474–5606; or email: *hal.horsburgh@faa.gov*. Send the results within the following compliance times:

(1) Within 30 days after the inspection required in paragraph (h)(1) of this AD even if no damage is found.

(2) Within 30 days after any inspection required by paragraph (i) of this AD if cracks are found.

(n) Special Flight Permit

Special flight permits are allowed for this AD with these limitations:

(1) Vne reduced to 121 m.p.h. (105 knots); and

(2) No flight into known turbulence.

(o) Paperwork Reduction Act Burden Statement

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

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) AMOCs approved for AD 2005–12–02 (70 FR 33820, June 10, 2005) are approved as AMOCs for this AD.

(q) Related Information

For more information about this AD, contact Hal Horsburgh, Aerospace Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5553; fax: (404) 474–5606; email: *hal.horsburgh@faa.gov*.

(r) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 13, 2013.

(i) Revo Inc. Service Bulletin B–78 R3, Revision 3, dated January 10, 2012;

(ii) Revo Inc. Service Bulletin B–78 R2, Revision 2, dated October 26, 2011;

(iii) Revo Inc. Service Bulletin B–78 R1, Revision 1, dated July 26, 2005;

(iv) Lake Central Aircraft Services Lake Amphibian Stabilizer Fitting LC–2200–21 Installation Instructions, Document CI–LC–2200–21, Rev B, dated August 26, 2005;

(v) Lake Central Air Services Stabilizer Fitting LC–2200–21 Maintenance Manual Supplement, Document MS–LC–2200–21, Rev B, dated August 26, 2005;

(vi) XLS Company, LLC Report XLS–2–2200–21–500, Installation Instructions for XLS Co., LLC Horizontal Stabilizer Support Fitting System for Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake–4P, and Lake LA–4–200 Aircraft, Revision B, dated November 18, 2005; and

(vii) XLS Company, LLC Report XLS–2–2200–21–ICA, Instructions for Continued Airworthiness for XLS Co., LLC Horizontal Stabilizer Support Fitting System for Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake–4P, and Lake LA–4–200 Aircraft, dated October 15, 2005.

(4) The following service information was approved for IBR on July 8, 2005 (70 FR 33820, June 10, 2005).

(i) Revo Inc. Service Bulletin B–78, dated April 3, 1998.

(ii) Reserved.

(5) For Revo, Incorporated service information identified in this AD, contact Revo, Incorporated, 1396 Grandview Boulevard, Kissimmee, FL 34744; telephone: (407) 847–8080; email: *support@teamlake.com;* Internet: none.

(6) For Lake Central Air Services service information identified in this AD, contact Lake Central Air Services, Muskoka Airport, R.R. #1, Gravenhurst, Ontario, Canada P1P 1R1; telephone: (705) 687–4343; email: *akecent@muskoka.com;* Internet: *www.lakecentral.com*.

(7) For XLS Co. service information identified in this AD, contact Robert L. Copeland, 418B Bartow Municipal Airport, Bartow, FL 33830; FAA Aerospace Engineer (Hal Horsburgh), telephone: (404) 474–5553.

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

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

Appendix 1 to AD 2013–08–14

INSPECTION REPORT for Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 Airplanes

BILLING CODE 4910–13–P

AD 2013-08-14

INSPECTION REPORT for

Revo, Incorporated Models COLONIAL C-1, COLONIAL C-2, LAKE LA-4, LAKE LA-4A, LAKE LA-4P, and LAKE LA-4-200 Airplanes

1. Inspection Performed By:	*2. Telephone:*
3. Aircraft Model:	*4. Aircraft Serial Number:*
5. Date of AD Inspection:	*6. Total hours time-in-service (TIS) on the fitting:*
7. Cracks found? ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*	*8. Length of Crack(s):* *Left fitting:* *Right fitting*
9. Fretting found? ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*	*10. Corrosion found?* ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*

Send to:

Hal Horsburgh

Email: hal.horsburgh@faa.gov

FAA, Atlanta ACO, Attn: Hal Horsburgh
1701 Columbia Ave
College Park, GA 30337

Facsimile: 404-474-5606

OMB Control Number 2120-0056

Figure 1 to Appendix 1.

Issued in Kansas City, Missouri, on April 12, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10758 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1068; Directorate Identifier 2011–NM–073–AD; Amendment 39–17443; AD 2013–09–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding two existing airworthiness directives (AD) that apply to certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Those ADs, for certain airplanes, currently require repetitive inspections of the flap track of the wing outboard flap, and corrective actions if necessary; and eventual rework of the flap track assembly and rear spar attachments. For certain airplanes, this new AD adds repetitive inspections, scheduled overhauls, correct alignment during installation, and repetitive maintenance of the flap track, and corrective actions if necessary. This new AD also adds airplanes to the applicability. This AD was prompted by reports that the work sequence and procedures used during installation of replacement tracks could cause loose or cracked tracks. We are issuing this AD to detect and correct cracking and damage in the flap track, which could cause loss of the outboard trailing edge flap and consequent reduced controllability of the airplane.

DATES: This AD is effective June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 22, 2002 (67 FR 11891, March 18, 2002).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 2, 2001 (65 FR 78913, December 18, 2000).

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax 425–917–6590; email: *nancy.marsh@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); and AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). Those ADs apply to the specified products, and require repetitive inspections of the flap track of the wing outboard flap, and corrective actions if necessary; and eventual rework of the flap track assembly and rear spar attachments. The NPRM published in the **Federal Register** on October 10, 2012 (77 FR 61542). The NPRM proposed to retain all requirements of AD 2000–25–07 and AD 2002–05–07. For certain airplanes, the NPRM proposed to add repetitive inspections, scheduled overhauls, correct alignment during installation, and repetitive maintenance of the flap track, and corrective actions if necessary. This new AD also adds airplanes to the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 61542, October 10, 2012) and the FAA's response to each comment.

Concurrence

Boeing and United concurred with the content of the NPRM (77 FR 61542, October 10, 2012).

Request To Change Text of Paragraph (p)(3) of the NPRM (77 FR 61542, October 10, 2012)

Alaska Airlines requested that we change the text of paragraph (p)(3) of the NPRM (77 FR 61542, October 10, 2012) to revise the descriptions of the inspection locations to be similar to the instructions included in Boeing 737 Non Destructive Test (NDT) Manual Part 6, 57–50–06. The commenter suggested that the existing wording in paragraph (p)(3) of the NPRM contradicts the instructions specified in Boeing 737 NDT Manual Part 6, 57–50–06.

We disagree with the request to change the text of paragraph (p)(3) of this AD. The inspections specified in paragraph (p)(3) of this AD must be done in accordance with paragraph 3.B.3., "Inspection—Track Webs and Flanges," of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012. The instructions for accomplishing the eddy current inspection required by paragraph (p)(3) of this AD are detailed in Boeing 737 NDT Manual Part 6, 57–50–06, which is an additional source of guidance. There is no contradiction in the instructions. No change has been made to the AD in this regard.

Request for Revised Service Information

Southwest Airlines requested that Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, be revised to add missing necessary data to support the rework requirements of paragraphs (s) and (t) of the NPRM (77 FR 61542, October 10, 2012) for flap track part number (P/N) 65C34809–3. The commenter stated that paragraphs (s) and (t) of the NPRM require doing the corrective actions in accordance with Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012. The commenter also stated that Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, provides repair data, but the commenter noted that not all repair data are provided for flap track P/N 65C34809–3. The commenter added that Boeing

Overhaul Manual 57–53–15, Figure 614, "Supplemental Track Overhaul Instructions," should be revised to add minimum allowable dimensions T1 through T4, W, and maximum allowable hole diameters d1, d2, and d3 for flap track P/N 65C34809–3.

We disagree that any revised service information is necessary to comply with the requirements of this AD. While the repair data for flap track P/N 65C34809–3 is less extensive than for other tracks, the information provided in Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, is adequate for this part. Since that flap track has improved finishes, it is not expected to wear in the same way as the other parts. If this flap track requires repair or rework that exceeds the data currently provided, then operators may request approval of new repair and rework limits in accordance with paragraph (y) of this AD. No change has been made to the AD in this regard.

Request To Extend Compliance Time

Sky King, Inc. requested that we extend the compliance time from 180 days to 24 months for airplanes with flap tracks that are undocumented or did not previously require inspection by AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); or AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). The commenter stated that extending the compliance time as requested will allow the operator to inspect the flap tracks at a more convenient interval, such as a scheduled "C-check" maintenance interval.

We disagree with the request to extend the compliance time. The initial inspection compliance time of 180 days was selected to address potential safety issues on flap tracks that have not been inspected in accordance with AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); or AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). The commenter provided no data to support a request to extend the compliance time for these airplanes.

In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations and the practical aspect of accomplishing the inspection within an interval of time that corresponds to typical scheduled maintenance for affected operators. We consider that U.S. operators have had ample time to consider initiating the actions specified in Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, cited in the NPRM (77 FR 61542, October 10, 2012), which this AD ultimately requires. Under the provisions of paragraph (y) of this AD, however, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change has been made to the AD in this regard.

Effect of Supplemental Type Certificate (STC) for Winglet

Aviation Partners Boeing stated that the installation of winglets per STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the accomplishment of the manufacturer's service instructions.

We have added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval in accordance with the procedures specified in paragraph (y) of this AD.

Other Changes to the AD

We have removed table 1 to paragraph (g) from this AD; instead, we have included the subject part numbers in paragraphs (g)(4)(i) through (g)(4)(x) of this AD. This change does not affect the intent of that paragraph.

We have revised the second to last sentence in paragraph (p) of this AD to add references to paragraphs (l) and (m) of this AD. Performing the inspections required by paragraph (p) of this AD terminates the requirements of paragraphs (g), (j), (l), (m), and (n) of this AD.

We have revised paragraph (s) of this AD to clarify the requirements for a damaged or corroded anti-fret strip.

We have revised paragraph (x)(3) of this AD to correct the service bulletin citation to Boeing Service Bulletin 737–57A1271, Revision 2, dated January 17, 2011.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 61542, October 10, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 61542, October 10, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 570 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Detailed visual inspection [retained actions from existing AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000)].	6 work-hours × $85 per hour = $510.	$0	$510	290	$147,900.
Detailed visual, HFEC, and ultrasonic inspections [retained actions from existing AD 2002–05–07, Amendment 39-12675 (67 FR 11891, March 18, 2002)].	4 work-hours × $85 per hour = $340.	0	$340	1,100	$374,000.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Detailed and eddy current inspections [new actions].	82 work-hours × $85 per hour = $6,970 per inspection cycle.	0	$6,970 per inspection cycle	570	$3,972,900 per inspection cycle.
Overhaul [new action]	70 work-hours × $85 per hour = $5,950 per overhaul cycle.	20,000	$25,950 per overhaul cycle	570	$14,791,500 per overhaul cycle.

We have received no definitive data that would enable us to provide cost estimates for labor cost for repair, and parts cost for repair and replacement for the on-condition actions specified in this AD. The labor cost of the replacement is $1,360 (16 work-hours × $85 per hour). We have no way of determining the number of aircraft that might need these repairs/replacements.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); and AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002); and adding the following new AD:

2013–09–02 The Boeing Company: Amendment 39–17443; Docket No. FAA–2012–1068; Directorate Identifier 2011–NM–073–AD.

(a) Effective Date

This AD is effective June 13, 2013.

(b) Affected ADs

This AD supersedes ADs 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); and 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports that the work sequence and procedures used during installation of replacement tracks installed in accordance with AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); or AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002); could cause loose or cracked tracks. We are issuing this AD to detect and correct cracking and damage in the flap track, which could cause loss of the outboard trailing edge flap and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections

This paragraph restates the inspections required by paragraph (a) of AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000), with added references to a terminating action. For Model 737–100, –200, and –200C series airplanes on which the left- or right-hand inboard flap tracks of the wing outboard flap have a part number (P/N) listed in paragraphs (g)(4)(i) through (g)(4)(x) of this AD: Do a detailed visual inspection to detect damage (corrosion, cracking) of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap, per Boeing All Operator Message (AOM) M–7200–00–01854, dated July 27, 2000, at the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles. Accomplishing the requirements of paragraph (p) of this AD terminates the requirements of this paragraph.

(1) Within 30 days after January 2, 2001 (the effective date of AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000)).

(2) Within 1,200 flight cycles after the last documented inspection or overhaul of the aft end of each flap track.

(3) Before the accumulation of 15,000 total flight cycles.

(4) Boeing flap tracks subject to this AD are identified in paragraphs (g)(4)(i) through (g)(4)(x) of this AD.

(i) P/N 65–46428–9.
(ii) P/N 65–46428–15.
(iii) P/N 65–46428–17.
(iv) P/N 65–46428–19.
(v) P/N 65–46428–21.
(vi) P/N 65–46428–23.
(vii) P/N 65–46428–25.
(viii) P/N 65–46428–27.
(ix) P/N 65–46428–33.
(x) P/N 65–46428–35.

(h) Retained Definition

This paragraph restates the definition specified by Note 2 of AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000). For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as a mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) Retained Corrective Actions

This paragraph restates the corrective actions required by paragraph (b) of AD 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000), with added reference to the Boeing Commercial Airplanes Organization Designation Authorization (ODA). If any damage (corrosion, cracking) is detected during any inspection required by paragraph (g) of this AD, before further flight, repair or rework the flap track per the "Repair and Rework Instructions" specified in Boeing AOM M–7200–00–01854, dated July 27, 2000. Where that AOM specifies that the manufacturer may be contacted for disposition of certain corrective actions (i.e., repair and/or rework of the flaps), this AD requires such repair and/or rework to be done using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) or the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the ODA, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(j) Retained Initial Inspections

This paragraph restates the initial inspections required by paragraph (a) of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002), with added references to terminating action. For Model 737–100, –200, and –200C series airplanes with line numbers (L/N) 1 through 869 inclusive, and those airplanes with L/Ns 870 through 1585 inclusive, which either still have their original flap tracks or which have had the original flap tracks replaced with certain tracks as specified in Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000; except airplanes on which any replacement flap tracks were installed as specified in Boeing Service Bulletin 737–57–1203, dated November 15, 1990, or production equivalent: Within 6 months after April 22, 2002 (the effective date of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002)), accomplish the requirements of paragraphs (j)(1) and (j)(2) of this AD, according to Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000. Accomplishing the requirements of paragraph (p) of this AD terminates the requirements of this paragraph.

(1) Perform a detailed visual inspection for discrepancies (e.g., corrosion, or missing, damaged, or migrated anti-fret strips and tapered shims) of the rear spar attachments of the flap tracks.

(2) Perform detailed visual, high frequency eddy current (HFEC), and ultrasonic inspections for cracking in the upper flange of the inboard track of each outboard flap at the rear spar attachments.

(k) Retained Credit for Certain Previous Actions

This paragraph restates the credit for certain previously accomplished actions specified by Note 3 of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). This paragraph provides credit for the actions specified in paragraphs (j), (l), (m), and (n) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–57A1249, including Appendix A, dated December 16, 1999, which is not incorporated by reference in this AD.

(l) Retained Repetitive Inspections of the Rear Spar Attachment of the Flap Tracks and Upper Flange of the Inboard Track of Each Outboard Flap at the Rear Spar Attachments

This paragraph restates the repetitive inspections required by paragraph (b) of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). For airplanes subject to the requirements of paragraph (j) of this AD: If no discrepancy is found during any inspection required by paragraph (j) of this AD, thereafter, repeat the inspections specified in paragraph (j) of this AD at intervals not to exceed 9 months, until the actions required by paragraph (m) or (p) of this AD have been accomplished.

(m) Retained Rework

This paragraph restates the rework required by paragraph (c) of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). For airplanes subject to the requirements of paragraph (j) of this AD: At the applicable time specified in paragraph (m)(1) or (m)(2) of this AD, accomplish rework of the flap track assembly and aft flap track attachments (including removal of the flap track; a detailed visual inspection for a missing, damaged, or migrated anti-fret strip and tapered shim of the rear spar attachments of the flap track; replacement of the anti-fret strip with a new aluminum anti-fret strip (or installation of an aluminum strip if no strip is installed), as applicable; replacement of the tapered shim with a new shim (or installation of a shim if no shim is installed); eddy current and ultrasonic inspections for fatigue cracking of the flap tracks; a detailed visual inspection for corrosion of the flap tracks; and rework of attachment holes), including replacement of the flap tracks, as applicable, by accomplishing all actions specified in Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000. Do these actions according to the Accomplishment Instructions of Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000, except as provided by paragraph (o) of this AD. Accomplishment of the actions required by this paragraph terminates the repetitive inspections required by paragraph (l) of this AD. Accomplishing the requirements of paragraph (p) of this AD terminates the requirements of this paragraph.

(1) If no discrepancy is found during any inspection required by paragraph (j) or (l) of this AD: Do the rework within 24 months after April 22, 2002 (the effective date of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002)).

(2) If any discrepancy is found during any inspection required by paragraph (j) or (l) of this AD: Do the rework prior to further flight.

(n) Retained Repetitive Inspections of the Upper Flange of the Inboard Track of Each Outboard Flap at the Rear Spar Attachments

This paragraph restates the repetitive inspections required by paragraph (d) of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). For Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, except airplanes on which any replacement flap tracks were installed as specified in Boeing Service Bulletin 737–57–1203, dated November 15, 1990, or production equivalent: At the applicable time specified in paragraph (n)(1) or (n)(2) of this AD, and thereafter at least every 24 months, perform detailed visual, HFEC, and ultrasonic inspections for cracking in the upper flange of the inboard track of each outboard flap at the rear spar attachments, according to Part I of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000. Accomplishing the requirements of paragraph (p) of this AD terminates the requirements of this paragraph.

(1) For airplanes subject to paragraph (m) of this AD, do the inspections within 10 years after accomplishment of the rework according to paragraph (m) of this AD.

(2) For airplanes other than those identified in paragraph (n)(1) of this AD, do the inspections within 10 years since the airplane's date of manufacture, or within 6 months after April 22, 2002 (the effective date of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002)), whichever occurs later.

(o) Retained Repair Instructions and Exception to Procedures in Service Information

This paragraph restates the repair instructions and exception to procedures required by paragraph (e) of AD 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002). If any discrepancy is found during any action required by paragraph (j), (l), or (m) of this AD, and Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000, specifies to contact Boeing for appropriate action; or if any discrepancy is found during inspections according to paragraph (n) of this AD: Prior to further flight, repair according to a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing DER or Boeing Company ODA, that has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the ODA, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(p) New Inspection of Flap Track Web and Flanges

For all airplanes: At the times specified in paragraph (q) of this AD, do the inspections specified in paragraphs (p)(1), (p)(2), (p)(3), and (p)(4) of this AD, and do all applicable corrective actions, in accordance with paragraph 3.B.3., "Inspection—Track Webs and Flanges," of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, except as required by paragraphs (r) and (v) of this AD. Performing these inspections terminates the requirements of paragraphs (g), (j), (l), (m), and (n) of this AD. Do all applicable corrective actions before further flight.

(1) Detailed inspection for damage (cracks, nicks, corrosion pits, galling, pieces broken off) and stop-drill repairs along the full length of the upper and lower flanges of the flap track.

(2) Detailed inspection for damage, cracking, and stop-drill repairs along the full length of the track webs.

(3) Eddy current inspection for damage (including cracking) of the flap track web and flanges.

(4) Inspection to determine the part number of the flap track assembly.

(q) New Compliance Time

At the latest of the applicable times specified in paragraphs (q)(1), (q)(2), and (q)(3) of this AD, do the actions required by paragraph (p) of this AD.

(1) Within 96 months since the flap track was new or overhauled, or prior to the accumulation of 15,000 flight cycles on the flap track since new or overhauled, whichever occurs first.

(2) Within 180 days after the effective date of this AD.

(3) Within 24 months after the most recent inspection was performed using Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1249, including Appendix A, dated December 16, 1999; or Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000.

(r) New Replacement

If, during any inspection required by paragraph (p) of this AD, any flap track assembly having P/N 65–46428–31 or 65–46428–33 is found, before further flight, replace the flap track assembly with a new or serviceable flap track assembly, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, except as required by paragraph (v) of this AD.

(s) New Inspections of Flap-to-Wing Attachment if Repairs Are Done or if No Damage Is Found in Flap Track Web and Flanges

For airplanes on which no damage is found in the flanges or the web during any inspection required by paragraph (p) of this AD; and for airplanes on which a repair is done during any corrective action required by paragraph (p) of this AD: Before further flight, do the inspections specified in paragraphs (s)(1) through (s)(4) of this AD, and do all applicable related investigative and corrective actions, in accordance with paragraphs 3.B.4., "Inspection—With Track-to-Wing Attachment Assembled," and 3.B.5., "Inspection—With Track-to-Wing Attachment Disassembled," of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, except as required by paragraph (v) of this AD. If, during the inspection required by paragraph (s)(1) of this AD, an anti-fret strip is not found installed, before further flight, do the related investigative actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012. If, during the inspection required by paragraph (s)(1) of this AD, an anti-fret strip is found with signs of damage or corrosion, before further flight, do all applicable corrective actions, including making and installing a new anti-fret strip, in accordance with paragraph 3.B.5., "Inspection—With Track-to-Wing Attachment Disassembled," of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, except as required by paragraph (v) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) Detailed inspection for signs of movement between the tapered shim and anti-fret strip, installation of the anti-fret strip, and corrosion of the tapered shim and anti-fret strip.

(2) Detailed inspection for signs of movement, cracks and corrosion of the area where the track is attached to the wing rear spar.

(3) High frequency eddy current inspection for cracking of the outboard edge of the track adjacent to the outboard attach bolt.

(4) Ultrasonic inspection for cracking of the inner edge of the track adjacent to the outboard attach bolt.

(t) New Overhaul

Within 10,000 flight cycles on the flap track or 48 months, whichever occurs first, after accomplishing the inspection required by paragraph (p) of this AD: Do an overhaul of the flap track, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, except as required by paragraph (v) of this AD. Repeat the overhaul thereafter at intervals not to exceed 20,000 flight cycles on the flap track or 96 months, whichever occurs first.

(u) New Post-Overhaul Inspections

For airplanes on which any overhaul required by paragraph (t) of this AD is done: Do the inspections specified in paragraph (p) of this AD within 10,000 flight cycles on the flap track or 48 months after the most recent overhaul, whichever occurs first. Repeat the inspections specified in paragraph (p) of this AD thereafter at intervals not to exceed 10,000 flight cycles on the flap track or 48 months, whichever occurs first; except that if an overhaul required by paragraph (t) of this AD is done, do the next inspection within 10,000 flight cycles or 48 months, whichever occurs first, after the overhaul.

(v) Service Information Exception

Where Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (y) of this AD.

(w) New Parts Installation Prohibition

As of the effective date of this AD, no person may install a flap track assembly, P/N 65–46428–31 or 65–46428–33, on any airplane.

(x) New Credit for Previous Actions in Paragraphs (p) Through (t) of This AD

This paragraph provides credit for the actions specified in paragraphs (p) through (t) of this AD, if those actions were performed before the effective date of this AD using the service bulletin specified in paragraph (x)(1), (x)(2), or (x)(3) of this AD.

(1) Boeing Alert Service Bulletin 737–57A1271, dated September 11, 2003, which is not incorporated by reference in this AD.

(2) Boeing Service Bulletin 737–57A1271, Revision 1, dated July 30, 2008, which is not incorporated by reference in this AD.

(3) Boeing Service Bulletin 737–57A1271, Revision 2, dated January 17, 2011, which is not incorporated by reference in this AD.

(y) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the

attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously in accordance with ADs 2000–25–07, Amendment 39–12041 (65 FR 78913, December 18, 2000); and 2002–05–07, Amendment 39–12675 (67 FR 11891, March 18, 2002); are approved as AMOCs for the corresponding requirements of this AD.

(z) Related Information

For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

(aa) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 13, 2013.

(i) Boeing Service Bulletin 737–57A1271, Revision 3, dated February 13, 2012.

(ii) Reserved.

(4) The following service information was approved for IBR on April 22, 2002 (67 FR 11891, March 18, 2002).

(i) Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000.

(ii) Reserved.

(5) The following service information was approved for IBR on January 2, 2001 (65 FR 78913, December 18, 2000).

(i) Boeing All Operator Message M–7200–00–01854, dated July 27, 2000.

(ii) Reserved.

(6) 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.*

(7) You may view this service information at 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.

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

Issued in Renton, Washington, on April 19, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10006 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0808; Directorate Identifier 2010–NM–170–AD; Amendment 39–17380; AD 2013–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 and A330–300 series airplanes, and Model A340–200 and A340–300 series airplanes. This AD was prompted by reports of an elevator blocked in the down position due to two independent failures; first, the inability of a servo control to switch to active mode because it was not detected by a flight control computer; and second, an internal hydraulic leak due to the deterioration of an O-ring seal on a solenoid. This AD requires, depending on airplane configuration, modifying three flight control primary computers (FCPCs); modifying two flight control secondary computers (FCSCs); revising the airplane flight manual (AFM) to include certain information; replacing certain O-rings; and checking part number and replacing certain O-ring seals if needed. We are issuing this AD to detect and correct O-rings with incorrect part numbers whose deterioration could lead to improper sealing of solenoid valves; and to correct FCPC and FCSC software to allow better control of elevator positioning; both conditions, if not corrected, could lead to the loss of elevator control on takeoff, and potentially reduce the controllability of the airplane.

DATES: This AD becomes effective June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 13, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 14, 2012 (77 FR 48469). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> This [European Aviation Safety Agency (EASA)] AD [2010–0081, dated April 27, 2010] deals with the two following points:
>
> • Case of an elevator blocked in down position due to two independent failures one of which is hidden:
>
> Each elevator is controlled by two servo controls. In normal operation:
>
> —one servo control in active mode controlled by PRIM 1 (Green servo control),
>
> —one servo control in damping mode (Yellow or Blue servo control) monitored by PRIM 2.
>
> Change from active mode to damped mode is obtained by means of a mode selector which is controlled by two identical solenoid valves housed on the servo control. The sealing of each solenoid valve is ensured by four O-ring seals.
>
> During pre-flight control checks, the flight crew of an A330–200 aeroplane observed that one of the elevators was blocked in down position, the ECAM [electronic centralized aircraft monitor] screen displaying "F/CTL PRIM 1 PITCH FAULT".
>
> This condition was due to two independent failures, one of which was dormant, which occurred on one of the elevators.
>
> Investigations revealed that the origin of the elevator malfunction was due to the inability of the Yellow servo control to switch to active mode.
>
> This inability:
>
> —was caused by an internal hydraulic leak due to the deterioration of an O-ring seal on a solenoid valve,

—was not detected by the PRIM 2 computer nor announced to the flight crew.

• Incorrect Part Number (P/N) for solenoid valve O-ring seals in IPC [illustrated parts catalog]:

An incorrect O-ring seal P/N in IPC 27–34–51–1 could have led to the installation of O-ring seals incompatible with the hydraulic fluid, causing them to deteriorate.

These conditions if not detected could lead to the loss of elevator [control] on takeoff and, potentially reduce the controllability of the aeroplane.

The aim of EASA AD 2007–0009 was to:

—take over the requirements of AD F–2004–158, and

—require the terminating action for § (1), (2) and (4) of this [EASA] AD by introducing new capped seals on solenoid valves for A330–200 only.

This new [EASA] AD * * * requires the embodiment of the latest software standard on the three Flight Control Primary Computers (FCPC) and on the two Flight Control Secondary Computers (FCSC) [by modifying the FCPCs and FCSCs] * * *.

The modification is accomplished either by replacing the FCPCs and FCSCs with new FCPCs and FCSCs, or by replacing or reprogramming the on-board replaceable modules in the FCPCs and FCSCs. Required actions also include, depending on airplane configuration, the following actions: Revising the AFM to include certain information; replacing certain O-rings; and checking part number and replacing certain O-ring seals if needed. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request for Exemption for Later Standards of FCPC Software

Delta Air Lines, Inc. (Delta) requested that we revise the NPRM (77 FR 48469, August 14, 2012) to provide an exemption for later standards of FCPC software. Since completing Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008, Delta stated that it upgraded FCPC software from standard P9/M18 to newer standard P11A/M20A as specified in Airbus Mandatory Service Bulletin A330–27–3176, dated July 26, 2011. Delta noted that when there are significant differences between the airspeed sources, the autopilot (AP) and the auto-thrust (A/THR) are designed to disconnect, and the flight directors (FD) bars are automatically removed. Delta also noted that if two of the airspeed sources then read similar, yet erroneous numbers, the AP and A/THR will re-engage, and the FD bars will reappear. Delta stated that this newer standard addresses these safety concerns.

We agree to revise this AD to allow modification of the FCPC with the software identified in Airbus Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012, as well as the software identified in Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011; Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011; and Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012. We have added paragraph (o) to this AD to specify that modification of the three FCPC with new software specified in paragraphs (o)(1) through (o)(4) of this AD is acceptable for compliance with the requirements of paragraph (l) of this AD.

In addition, we have added new paragraph (p)(4) of this AD to give credit for performing actions before the effective date of this AD using Airbus Service Bulletin A330–27–3176, dated July 26, 2011; Airbus Mandatory Service Bulletin A330–27–3176, Revision 01, dated March 27, 2012; and Airbus Mandatory Service Bulletin A340–27–4162, dated January 10, 2012.

We are also considering further rulemaking that would correspond to EASA AD 2011–0199R1, dated February 17, 2012, to mandate implementation of these new FCPC standards.

Request for Credit for Modification of FCPC Software Using Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, October 9, 2008

Delta requested that we revise paragraph (o)(2) of the NPRM (77 FR 48469, August 14, 2012) to give credit for modification of FCPC software done using Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008. This service bulletin is the appropriate source of service information for accomplishing the actions required by paragraph (l) of the NPRM. Delta stated that paragraph (o)(2) of the NPRM provides credit, if those actions were performed using Airbus Service Bulletin A330–27–3144, dated April 2, 2009, but there are no statements giving credit for modifications of the FCPC performed using Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008.

We disagree with this request to revise this AD, but agree to clarify that this AD allows for previous accomplishment of the modification using Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008. Paragraph (l) of this AD mandates modifications of FCPC software using current revisions of the service information, Airbus Service Bulletin A330–27–3144, Revision 01, dated July 16, 2009; or Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, October 9, 2008. Paragraph (p)(2) of this AD (referred to as paragraph (o)(2) in the NPRM (77 FR 48469, August 14, 2012)) gives credit only for actions performed using previous revisions of the service information specified in paragraph (l) of this AD, i.e., Airbus Mandatory Service Bulletin A330–27–3144, dated April 2, 2009; and Airbus Mandatory Service Bulletin A330–27–3148, dated July 17, 2008. Since paragraph (f) of this AD indicates previous accomplishment of modifications do not need to be repeated, the intent of the comment is addressed. No change has been made to the AD in this regard.

Request for Credit for Modification of FCSC Software Using Airbus Service Bulletin A330–27–3145, Revision 1, Dated July 17, 2008

Delta requested that we revise paragraph (o)(3) of the NPRM (77 FR 48469, August 14, 2012) to give credit for modification of the FCSC software done using Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008; and Airbus Service Bulletin A330–27–3145, dated December 16, 2008. Delta noted these service bulletins are referred to as the appropriate sources of service information for accomplishing the actions proposed by paragraph (m) of the NPRM. Delta stated that paragraph (o)(3) of the NPRM provides credit, if those actions were performed using Airbus Mandatory Service Bulletin A330–27–3146, dated June 1, 2007, but pointed out that there are no statements giving credit for modifications of the FCSC performed using Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008.

We disagree with this request to revise this AD but agree to clarify that this AD allows for previous accomplishment of the modification using Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008; and Airbus Service Bulletin A330–27–3145, dated December 16, 2008. Paragraph (m) of this AD mandates modifications of FCSC software using Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008; or Airbus Service Bulletin A330–27–3145, dated December 16, 2008. Paragraph (p)(3) of this AD (referred to as paragraph (o)(3) in the NPRM (77 FR 48469, August 14, 2012)) gives credit

only for actions performed using previous revisions of the service information specified in paragraph (m) of this AD, i.e., Airbus Service Bulletin A330–27–3146, dated June 1, 2007. Since paragraph (f) of this AD indicates previous accomplishment of modifications do not need to be repeated, the intent of the comment is addressed. No change has been made to the AD in this regard.

Request for Credit for Installation of Modified Servo-Controls Using Airbus Service Bulletin A330–27–3134, Revision 01, Dated May 12, 2006; and Airbus Mandatory Service Bulletin A330–27–3136, Revision 1, Dated July 19, 2006

Delta requested that we revise paragraph (p) of the NPRM (77 FR 48469, August 14, 2012) to give credit for the installation of modified servo-controls done using Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006; and Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006.

We disagree with this request to revise this AD, but agree to clarify that this AD allows for previous accomplishment of the installation using Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006; and Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006. Paragraph (q) of this AD (referred to as paragraph (p) of the NPRM (77 FR 48469, August 14, 2012)) provides terminating action for the actions required by paragraphs (g), (h), and (i) of this AD, if the installation of modified servo-controls was using Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006; and Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006. Since paragraph (f) of this AD indicates previous accomplishment of the installation not need to be repeated, the intent of the comment is addressed. No change has been made to the AD in this regard.

Explanation of Change Made to This AD

We have revised paragraph (n) of this AD to put the AFM text into Figure 1 to paragraph (n) of this AD, and included reference to the figure in that paragraph. This change does not affect the intent of that paragraph.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 48469, August 14, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 48469, August 14, 2012).

Costs of Compliance

We estimate that this AD will affect 41 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $17,425, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 48469, August 14, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–05–08 Airbus: Amendment 39–17380. Docket No. FAA–2012–0808; Directorate Identifier 2010–NM–170–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 13, 2013.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323,

–341, –342, and –343 airplanes, all manufacturer serial numbers (MSN).

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

(d) Subject

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

(e) Reason

This AD was prompted by reports of an elevator blocked in the down position due to two independent failures; first, the inability of a servo control to switch to active mode because it was not detected by a flight control computer; and second, an internal hydraulic leak due to the deterioration of an O-ring seal on a solenoid. We are issuing this detect and correct O-rings with incorrect part numbers whose deterioration could lead to improper sealing of solenoid valves; and to correct flight control primary computer (FCPC) and flight control secondary computer (FCSC) software to allow better control of elevator positioning; both conditions, if not corrected, could lead to the loss of elevator control on takeoff, and potentially reduce the 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) Replacement of O-ring Seals for Elevator Servo Controls Installed in Damping Position on Model A330–200 Series Airplanes Only

For all Airbus Model A330–200 series airplanes, except those on which Airbus modifications 53969 or 54833 have been embodied in production: At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, replace the O-ring seals installed on the two solenoid valves of each servo control using new O-ring seals, in accordance with Airbus All Operators Telex (AOT) A330–27A3129, Revision 01, dated July 16, 2004.

(1) Before the accumulation of 3,000 flight cycles by the servo control since first installation on an airplane, or 3,000 flight cycles since the installation of the solenoid valve on the servo control.

(2) Within 700 flight hours after the effective date of this AD.

(h) Replacement of O-ring Seals on Spare Elevator Servo Controls Whose O-ring Seals Were Not Replaced as Required by Paragraph (g) of This AD

For all Airbus Model A330–200 series airplanes, except those on which Airbus modifications 53969 or 54833 have been embodied in production: As of the effective date of this AD, before the installation of an elevator servo control on an Airbus Model A330–200 airplane, replace the O-ring seals installed on the two spare servo control solenoid valves using new O-ring seals, in accordance with Airbus AOT A330–27A3129, Revision 01, dated July 16, 2004.

(i) Replacement of O-ring Seals with Part Number (P/N) MS28775–XXX or a Part Number that Cannot Be Identified

For Model A330–200 series airplanes which have been modified as specified in Airbus AOT A330–27A3129, dated June 24, 2004, but which have not been modified as specified in Airbus AOT A330–27A3129, Revision 01, dated July 16, 2004; except those airplanes on which Airbus modifications 53969 or 54833 have been embodied in production: Within 15 days after the effective date of this AD, check the part number (P/N) of the seals installed on the solenoid valve of the servo control of the elevator in the damping position. If the seals installed have P/N MS28775–XXX or a part number that cannot be identified, before further flight, replace the seals with new seals using a part number listed in paragraph (i)(1), (i)(2), or (i)(3) of this AD, in accordance with Airbus AOT A330–27A3129, Revision 01, dated July 16, 2004.

(1) Illustrated Parts Catalog (IPC) 27–34–51–1 item 130: NAS1611–011 or NAS1611–011A.

(2) IPC 27–34–51–1 item 140: NAS1611–012 or NAS1611–012A.

(3) IPC 27–34–51–1 item 150: NAS1611–013 or NAS1611–013A.

(j) Replacement of O-ring Seals on Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

For Model A330–200, A330–300, A340–200, and A340–300 series airplanes equipped with elevator servo controls P/N SC4800–2/–4/–7/–8 or SC4800–7/–8 modified into P/N SC4800–7A/–9, as specified in Airbus Service Bulletin A340–27–4083 or Airbus Service Bulletin A330–27–3076: Within 1,400 flight hours after the effective date of this AD, replace the O-ring seals installed on the two solenoid valves of each elevator servo control in damping position (except for Model A330–200 series airplanes which have to comply with paragraph (g) of this AD), and in active position, using a new O-ring seal P/N NAS1611–XXX or P/N NAS1611–XXXA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27A3131, Revision 01, dated March 3, 2005 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–27A4130, Revision 01, dated March 3, 2005 (for Model A340 airplanes).

(k) Replacement of O-ring Seals on Spare Elevator Servo Controls on Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

For the spare elevator servo controls P/N SC4800–2/–4/–7/–8 or SC4800–7/–8 modified into P/N SC4800–7A/–9, as specified in Airbus Service Bulletin A340–27–4083 or Airbus Service Bulletin A330–27–3076: Before the installation of a spare elevator servo control on an airplane, replace the O-ring seals installed on the two spare servo control solenoid valves using a new O-ring seal P/N NAS1611–XXX or P/N NAS1611–XXXA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27A3131, Revision 01, dated March 3, 2005 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–27A4130, Revision 01, dated March 3, 2005 (for Model A340 airplanes).

(l) Modification of FCPCs

For all Airbus Model A330–200 and A330–300 series airplanes, except those on which both Airbus modifications 53468 and 55697 have been embodied in production; and for all Airbus Model A340–200 and A340–300 series airplanes, except those on which both modifications 55879 and 55697 have been embodied in production: Within 24 months after the effective date of this AD, modify the three FCPCs, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (l)(1) or (l)(2) of this AD.

(1) Airbus Service Bulletin A330–27–3144, Revision 01, dated July 16, 2009; or Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008 (for Model A330 airplanes).

(2) Airbus Mandatory Service Bulletin A340–27–4144, dated October 19, 2009; or Airbus Mandatory Service Bulletin A340–27–4148, dated June 13, 2008 (for Model A340 airplanes).

(m) Modification of FCSCs

For all Airbus Model A330–200 and A330–300 series airplanes, except those on which both Airbus modifications 53468 and 55697 have been embodied in production; and for all Airbus Model A340–200 and A340–300 series airplanes, except those on which both modifications 55879 and 55697 have been embodied in production: Within 24 months after the effective date of this AD, modify both FCSCs, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (m)(1) or (m)(2) of this AD.

(1) Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008; or Airbus Service Bulletin A330–27–3145, dated December 16, 2008 (for Model A330 airplanes).

(2) Airbus Mandatory Service Bulletin A340–27–4146, June 1, 2007; or Airbus Service Bulletin A340–27–4145, dated December 16, 2008 (for Model A340 airplanes).

(n) Revise the Airplane Flight Manual

Before further flight, after doing the applicable actions required by both paragraphs (l) and (m) of this AD, remove the procedure specified in Figure 1 to paragraph (n) of this AD from the airplane flight manual, if inserted, in accordance with the instructions contained in Airbus Temporary Revision TR4, Issue 1.0, "TR 4.02.00/25 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual; and Airbus Temporary Revision TR22, Issue 1.0, "TR 4.02.00/40 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual.

Figure 1 to Paragraph (n) – *Procedure to be Removed*

Undetected Elevator Control Loss in Case of Dual Failure

On ground, before takeoff until takeoff power thrust setting, apply the following procedure.

- In the case of a F/CTL PRIM 1 FAULT, or F/CTL PRIM 1 PITCH FAULT:
  Turn off PRIM 1, then back on to perform a FCPC PRIM 1 reset.
  - If successful:
  Perform the normal pre-flight Flight Control check.
  - If unsuccessful:
  Return to the gate and require appropriate maintenance actions.
- In the case of a F/CTL ELEV SERVO FAULT: Return to the gate and require appropriate maintenance actions.

(o) Optional Actions Acceptable for Compliance With the Modification Required by Paragraph (l) of This AD

Accomplishing the actions specified in paragraphs (o)(1) through (o)(4) of this AD, as applicable, is acceptable for compliance with the modification required by paragraph (l) of this AD.

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

(2) For airplanes identified Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011: Modification or replacement of the three FCPCs with software standard P12A/M21A on FCPC 2K1 hardware, and with software standard M21A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011 (for Model A330 airplanes).

(3) For airplanes identified in Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011: Modification or replacement of the three FCPCs with software standard L22A on FCPC 2K1 hardware, and with software standard L22A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011 (for Model A340 airplanes).

(4) For airplanes identified in Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012: Modification or replacement of the three FCPCs with software standard L21A on FCPC 2K2 hardware in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012 (for Model A340 airplanes).

(p) Credit for Previous Actions

This paragraph provides credit for certain actions described in the following paragraphs. The documents specified in paragraphs (p)(1) through (p)(5) of this AD are not incorporated by reference in this AD.

(1) This paragraph provides credit for replacements of the O-ring seals, as required by paragraphs (j) and (k) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–27A3131, dated September 22, 2004 (for Model A330 airplanes); or Airbus Service Bulletin 340–27A4130, dated September 22, 2004 (for Model A340 airplanes).

(2) This paragraph provides credit for modifications of the FCPC, as required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–27–3144, dated April 2, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A330–27–3148, dated July 17, 2008 (for Model A330 airplanes).

(3) This paragraph provides credit for modifications of the FCSCs, as required by paragraph (m) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–27–3146, dated June 1, 2007 (for Model A330 airplanes).

(4) This paragraph provides credit for modification or replacement of the FCSCs specified in paragraph (o)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–27–3176, dated July 26, 2011; or Airbus Mandatory Service Bulletin A330–27–3176, Revision 01, dated March 27, 2012 (for Model A330 airplanes).

(5) This paragraph provides credit for modification or replacement of the FCSCs specified paragraph (o)(4) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–27–4162, dated January 10, 2012 (for Model A340 airplanes).

(q) Terminating Action

Installation of modified servo-controls at all positions on Model A330–200 series airplanes in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006; and Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006; terminates the actions

required by paragraphs (g), (h), and (i) and of this AD.

(r) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. 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.

(s) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0081, dated April 27, 2010, and the service information specified in paragraphs (s)(1)(i) through (s)(1)(xix) of this AD, for related information.

(i) Airbus All Operators Telex (AOT) A330–27A3129, Revision 01, dated July 16, 2004.

(ii) Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006.

(iii) Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008.

(iv) Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008.

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

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

(vii) Airbus Mandatory Service Bulletin A330–27A3131, Revision 01, dated March 3, 2005.

(viii) Airbus Mandatory Service Bulletin A340–27–4144, dated October 19, 2009.

(ix) Airbus Mandatory Service Bulletin A340–27–4146, dated June 1, 2007.

(x) Airbus Mandatory Service Bulletin A340–27–4148, dated June 13, 2008.

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

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

(xiii) Airbus Mandatory Service Bulletin A340–27A4130, Revision 01, dated March 3, 2005.

(xiv) Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006.

(xv) Airbus Service Bulletin A330–27–3144, Revision 01, dated July 16, 2009.

(xvi) Airbus Service Bulletin A330–27–3145, dated December 16, 2008.

(xvii) Airbus Service Bulletin A340–27–4145, dated December 16, 2008.

(xviii) Airbus Temporary Revision TR4, Issue 1.0, "TR 4.02.00/25 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual.

(xix) Airbus Temporary Revision TR22, Issue 1.0, "TR 4.02.00/40 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual.

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

(t) Material Incorporated by Reference

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

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

(i) Airbus All Operators Telex (AOT) A330–27A3129, Revision 01, dated July 16, 2004.

(ii) Airbus Mandatory Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006.

(iii) Airbus Mandatory Service Bulletin A330–27–3146, Revision 01, dated September 3, 2008.

(iv) Airbus Mandatory Service Bulletin A330–27–3148, Revision 01, dated October 9, 2008.

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

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

(vii) Airbus Mandatory Service Bulletin A330–27A3131, Revision 01, dated March 3, 2005.

(viii) Airbus Mandatory Service Bulletin A340–27–4144, dated October 19, 2009.

(ix) Airbus Mandatory Service Bulletin A340–27–4146, dated June 1, 2007.

(x) Airbus Mandatory Service Bulletin A340–27–4148, dated June 13, 2008.

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

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

(xiii) Airbus Mandatory Service Bulletin A340–27A4130, Revision 01, dated March 3, 2005.

(xiv) Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006.

(xv) Airbus Service Bulletin A330–27–3144, Revision 01, dated July 16, 2009.

(xvi) Airbus Service Bulletin A330–27–3145, dated December 16, 2008.

(xvii) Airbus Service Bulletin A340–27–4145, dated December 16, 2008.

(xviii) Airbus Temporary Revision TR4, Issue 1.0, "TR 4.02.00/25 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual.

(xix) Airbus Temporary Revision TR22, Issue 1.0, "TR 4.02.00/40 Issue 2—Undetected Elevator Control Loss in Case of Dual Failure," dated November 26, 2009, to the Airbus A330/A340 Airplane Flight Manual.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on February 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10653 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1316; Directorate Identifier 2012–NM–186–AD; Amendment 39–17429; AD 2012–18–13 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series

airplanes. That AD currently requires repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the "Y" chord, various inspections for discrepancies at the aft pressure bulkhead, and related investigative and corrective actions if necessary. This new AD requires clarifying certain actions specified in the existing AD. This AD was prompted by several reports of fatigue cracks in the aft pressure bulkhead. We are issuing this AD to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage.

DATES: This AD is effective June 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 24, 2012 (77 FR 57990, September 19, 2012).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 10, 1999 (64 FR 19879, April 23, 1999).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). That AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. (AD 2012–18–13 superseded AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)). The NPRM published in the **Federal Register** on January 9, 2013 (78 FR 1772). That NPRM proposed to continue to require repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the "Y" chord, various inspections for discrepancies at the aft pressure bulkhead, and related investigative and corrective actions if necessary. That NPRM also proposed to clarify certain actions specified in the existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 1772, January 9, 2013) and the FAA's response to each comment.

Supportive Comment

The Boeing Company stated that it supports the NPRM (78 FR 1772, January 9, 2013).

Supplemental Type Certificate (STC) Comment

Aviation Partners Boeing stated that the installation of winglets per STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2c6e3dbddd36f91c862576a4005d64e2/$FILE/ST01219SE.pdf*) does not affect the accomplishment of the manufacturer's service instructions.

We have added paragraph (c)(2) of this AD to state that installation of STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2c6e3dbddd36f91c862576a4005d64e2/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 1772, January 9, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 1772, January 9, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 566 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Low frequency eddy current (LFEC) inspection [retained action from AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)].	8 work-hours × $85 per hour = $680	$0	$680	$384,880.
Detailed visual inspection [retained action from AD 99-08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)].	2 work-hours × $85 per hour = $170	0	$170	$96,220.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed, high frequency eddy current (HFEC), and LFEC inspections of the web at the "Y" chord of the bulkhead, the web located under the outer circumferential tear strap, the "Z" stiffeners at the dome cap, and existing repairs [retained actions from AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012)].	Up to 60 work-hours × $85 per hour = $5,100 per inspection cycle.	0	Up to $5,100 per inspection cycle.	Up to $2,886,600 per inspection cycle.

We estimate the following costs to do any necessary on-condition inspections that would be required based on the results of the initial inspection. We have no way of determining the number of aircraft that might need these inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed and HFEC inspections for oil-canning	1 work-hour × $85 per hour = $85	$0	$85
LFEC or HFEC inspection for cracking	2 work-hours × $85 per hour = $170	0	170

We have received no definitive data that would enable us to provide cost estimates for the crack repairs specified in this 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012), and adding the following new AD:

2012–18–13 R1 The Boeing Company: Amendment 39–17429; Docket No. FAA–2012–1316; Directorate Identifier 2012–NM–186–AD.

(a) Effective Date

This AD is effective June 13, 2013.

(b) Affected ADs

This AD revises AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2c6e3dbddd36f91c862576a4005d64e2/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by several reports of fatigue cracks in the aft pressure bulkhead. We are issuing this AD to detect and correct

such fatigue cracking, which could result in rapid decompression of the fuselage.

(f) Compliance

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

(g) Retained Initial Inspection

This paragraph restates the initial inspection required by paragraph (g) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Perform either inspection specified by paragraph (g)(1) or (g)(2) of this AD at the time specified in paragraph (h) of this AD.

(1) Perform a low frequency eddy current (LFEC) inspection from the alt side of the alt pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the web of the upper section of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the "Y" chord, from stringer 15 left (S–15L) to stringer 15 right (S–15R), in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998.

(2) Perform a detailed visual inspection of the aft fastener row attachment to the "Y" chord from the forward side of the aft pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the entire web of the aft pressure bulkhead at body station 1016.

(h) Retained Compliance Times

This paragraph restates the compliance times specified in paragraph (h) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Perform the inspection required by paragraph (g) of this AD at the time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 40,000 or more total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect within 375 flight cycles or 60 days after May 10, 1999 (the effective date of AD 99–08–23), whichever occurs later.

(2) For airplanes that have accumulated 25,000 or more total flight cycles and fewer than 40,000 total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect within 750 flight cycles or 90 days after May 10, 1999 (the effective date of AD 99–08–23), whichever occurs later.

(3) For airplanes that have accumulated fewer than 25,000 total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect prior to the accumulation of 25,750 total flight cycles.

(i) Retained Repetitive Inspections

This paragraph restates the repetitive inspections required by paragraph (i) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Within 1,200 flight cycles after performing the initial inspection required by paragraph (g) of this AD, and thereafter at intervals not to exceed 1,200 flight cycles: Perform either inspection specified by paragraph (g)(1) or (g)(2) of this AD.

(j) Retained Corrective Actions

This paragraph restates the corrective actions required by paragraph (j) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). If any discrepancy is detected during any inspection required by paragraph (g), (h), or (i) of this AD: Prior to further flight, accomplish the actions specified by paragraphs (j)(1) and (j)(3) of this AD, and paragraph (j)(2) of this AD, if applicable.

(1) Perform a high frequency eddy current inspection from the forward side of the bulkhead to detect cracking of the web at the "Y" chord attachment, around the entire periphery of the "Y" chord, in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1995.

(2) If the most recent inspection performed in accordance with paragraph (g) of this AD was not a detailed visual inspection: Accomplish the actions specified by paragraph (g)(2) of this AD. If the inspection was a detailed visual inspection, it is not necessary to repeat that inspection prior to further flight.

(3) Repair any discrepancy such as cracking or corrosion or misdrilled fastener holes using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(k) Retained Inspections of the Web at the "Y" Chord Upper Bulkhead From S–15L to S–15R

This paragraph restates the inspections of the web at the "Y" chord upper bulkhead from S–15L to S–15R required by paragraph (k) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD: Do detailed and LFEC inspections of the aft side of the bulkhead web, or do detailed and high frequency eddy current (HFEC) inspections from the forward side of the bulkhead, and do all applicable related investigative and corrective actions; in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraphs (r)(1) and (r)(3) of this AD. Inspect for cracks, incorrectly drilled fastener holes, and elongated fastener holes. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(1) Prior to the accumulation of 25,000 total flight cycles.

(2) Except as required by paragraphs (r)(2) and (r)(4) of this AD, at the later of the times specified in the "Compliance Time" column in table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(l) Retained Inspections of the Web at the "Y" Chord in the Lower Bulkhead From S–15L to S–15R With Revised Inspection and Repair Conditions

This paragraph restates the inspections of the web at the "Y" chord in the lower bulkhead from S–15L to S–15R required by paragraph (l) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012), with revised inspection and repair conditions. Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do detailed and eddy current inspections of the web from the forward or aft side of the bulkhead for cracks, incorrectly drilled fastener holes, and elongated fastener holes, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraphs (r)(1) and (r)(3) of this AD. If any crack, incorrectly drilled fastener hole, elongated fastener hole, or corrosion is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspections at the applicable times specified in table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(m) Retained One-Time Inspection Under the Tear Strap

This paragraph restates the one-time inspection under the tear strap required by paragraph (m) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a one-time LFEC inspection for cracks on the aft side of the bulkhead of the web located under the outer circumferential tear strap, or do a one-time HFEC inspection for cracks from the forward side of the bulkhead of the web located under the outer circumferential tear strap, in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. If any cracking is found, before further flight, repair the bulkhead using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(n) Retained Inspection for Oil-Canning

This paragraph restates the inspection for oil-canning required by paragraph (n) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a detailed inspection from the aft side of the bulkhead for oil-canning and do all

applicable related investigative and corrective actions, in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. Do all related investigative and corrective actions before further flight. Thereafter, repeat the inspection at the applicable times specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. For oil-cans found within the limits specified in Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: In lieu of installing the repair before further flight, at the applicable times specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, do initial and repetitive detailed and HFEC inspections for cracks of the oil-canning and install the repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. If any crack is found, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Installing the repair terminates the repetitive inspections for cracks.

(o) Retained Inspection of the Dome Cap at the Center of the Bulkhead

This paragraph restates the inspection of the dome cap at the center of the bulkhead required by paragraph (o) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do an eddy current inspection to detect any cracking of the dome cap at the center of the bulkhead, and do all applicable corrective actions, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. Do all corrective actions before further flight. Repeat the inspection at the times specified in table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(p) Retained Inspection of the Forward Flange of the "Z" Stiffeners at the Dome Cap

This paragraph restates the inspection of the forward flange of the "Z" stiffeners at the dome cap required by paragraph (p) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do an HFEC inspection to detect any cracking of the "Z" stiffener flanges at the dome cap in the center of the bulkhead, in accordance with Part V of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. If any crack is found, before further flight, repair the flanges using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspection at the applicable times specified in table 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(q) Retained Inspection for Existing Repairs on the Bulkhead

This paragraph restates the inspection for existing repairs on the bulkhead required by paragraph (q) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). Except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 7 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a detailed inspection of the bulkhead web and stiffeners for existing repairs, in accordance with Part VI of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD.

(1) If any repair identified in the "Condition" column of table 8 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, is found and the "Reference" column refers to Appendix A, B, C, or D of that service bulletin: At the applicable times specified in table 8 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(2) of this AD, do an HFEC inspection or an LFEC inspection of the web for cracking, in accordance with Appendix A, B, C, or D, as applicable, of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspections thereafter at the applicable intervals specified in table 8 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(2) If any repair identified in the "Condition" column of table 8 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, is found and the "Reference" column refers to Appendix E of that service bulletin: At the applicable times specified in table 8 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(2) of this AD, remove the repair and replace with a new repair, in accordance with Appendix E of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(3) If any non-SRM (structural repair manual) repair is found and the repair does not have FAA-approved damage tolerance inspections: Except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 7 of Paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, contact the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO), for damage tolerance inspections. Do those damage tolerance inspections at the times given using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(r) Retained Exceptions to the Service Information

This paragraph restates the exceptions to the service information required by paragraph (r) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012).

(1) Where Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies a compliance time "after the date of Revision 1 to this service bulletin," "from the date of Revision 3 of this service bulletin," "after the date of Revision 3 to this service bulletin," or "of the effective date of AD 99–08–23," this AD requires compliance within the specified compliance time after October 24, 2012 (the effective date of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012)).

(3) Access and restoration procedures specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, are not required by this AD. Operators may do those procedures following their maintenance practices.

(4) Where table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies a compliance time relative to actions done "in accordance with paragraph (a)(2) of AD 99–08–23," this AD requires compliance within the specified compliance time relative to actions specified in paragraph (g)(2) of this AD.

(5) Where the Condition columns in tables 2, 3, 5, and 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, refer to total flight cycles, this AD applies to the airplanes with the specified total flight cycles as of October 24, 2012 (the effective date of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012)).

(s) Retained Terminating Action With Revised Paragraph Reference

This paragraph restates the terminating action specified in paragraph (s) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012), with a revised paragraph reference. Accomplishment of the requirements in paragraph (k) of this AD terminates the requirements of paragraphs (g) through (j) of this AD.

(t) Credit for Previous Actions

This paragraph restates the credit for previous actions specified by paragraph (t) of AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012). This paragraph provides credit for the actions required by paragraphs (k) through (s) of this AD, if the actions were performed before the effective date of this AD using the service bulletins specified in paragraphs (t)(1) through (t)(4) of this AD.

(1) Boeing Alert Service Bulletin 737–53A1214, dated June 17, 1999.

(2) Boeing Alert Service Bulletin 737–53A1214, Revision 1, dated June 22, 2000.

(3) Boeing Alert Service Bulletin 737–53A1214, Revision 2, dated May 24, 2001.

(4) Boeing Alert Service Bulletin 737–53A1214, Revision 3, dated January 19, 2011.

(u) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests-foo.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 ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999), are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously in accordance with AD 2012–18–13, Amendment 39–17190 (77 FR 57990, September 19, 2012), are approved as AMOCs for the corresponding provisions of this AD.

(v) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6440; fax: (425) 917–6590; email: *olon.pohl@foa.gov.*

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

(w) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 24, 2012 (77 FR 57990, September 19, 2012).

(i) Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on May 10, 1999 (64 FR 19879, April 23, 1999).

(i) Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998.

(ii) Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1995.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) 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.

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

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

Ali Bahrami,

Monager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 2013–09113 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0662; Airspace Docket No. 08–AWA–2]

RIN 2120–AA66

Modification of Class B Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Philadelphia, PA, Class B airspace area to ensure the containment of large turbine-powered aircraft within Class B airspace, reduce controller workload, and reduce the potential for midair collision in the Philadelphia terminal area.

DATES: *Effective Date:* 0901 UTC, July 25, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Philadelphia, PA, Class B airspace area (77 FR 45290, July 31, 2012). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Three comments were received in response to the NPRM. The FAA considered all comments received before making a determination on this final rule.

Discussion of Comments

All three commenters expressed concern over the effect of expanding the PHL Class B to the east and southeast. One commenter was concerned by the possible effect on a busy VFR flyway, and by the funnel effect of having only 1000 feet vertically between the modified Class B and Alert Area A–220. Another commenter was concerned that more complicated airspace, combined with a bad economy and the high cost of flight training, would discourage

student pilots from completing their training. The third commenter suggested that enough lateral space be provided between the edge of Alert Area A–220 and the PHL Class B boundary to allow the two-way VFR flyway to continue.

The FAA agrees that the airspace east of PHL is congested and used for many varying aviation activities, and it shares the desire to design the airspace to minimize the possibility of incidents. However, the suggestion to leave room for a VFR flyway between A–220 and the Class B would leave the airspace boundary essentially where it is today. The current corridor is only 4 miles wide. Providing a VFR flyway as requested would preclude expanding the Class B airspace in an area needed so that PHL can properly contain arrivals on the downwind or final approach. Raising the Class B floor to make additional altitudes available for VFR flight is also not a viable option. PHL arrivals on the base leg outside 20 NM from the airport will be at, or descending to, 4,000 feet, making a 4,000 foot Class B airspace floor necessary in that area to achieve the containment of aircraft.

Mixing PHL arrivals and VFR aircraft outside the Class B presents a hazard to safety, which must be addressed. We believe that the Class B design in this rule provides the minimum airspace required for containment while leaving as much airspace as possible for VFR flight outside the Class B.

The Aircraft Owners and Pilots Association (AOPA) expressed concern that the number of cutouts and varying floor heights, combined with a lack of VFR landmarks, results in a complex design which VFR pilots will find confusing, and may result in airspace violations, especially near PNE and ILG.

The FAA does not agree. The multiple Class B subareas on final approach to runways 9 and 27 at PHL are designed to afford VFR flights, electing to fly beneath the Class B, the maximum amount of altitude while keeping them separated from airspace and altitudes used by IFR arrivals to PHL. To reduce the number of subareas or varying Class B floors, it would be necessary to combine subareas and use the lower floor for the entire subarea. This would cause the designation of more Class B airspace than is required for containment and further limit airspace available for VFR use. There are a number of references that can be used to assist VFR pilot navigation. Seven VOR facilities basically encircle the PHL Class B airspace area and can be used to assist in orientation to circumnavigate the area. There are also various landmarks such as Interstate I–295, I–95/New Jersey Turnpike, charted airports and charted VFR checkpoints. VFR aircraft can navigate below, above, around, or request ATC clearance to proceed through, the Class B airspace area.

The two new subareas (F and H) to the east and west of PHL evolved from the elimination of the 24–NM outer ring around the majority of the Class B airspace area that was being considered by the FAA in the early stages of the PHL Class B design modification. As discussed in the NPRM, input from the ad hoc committee and informal airspace meetings requested that the 24–NM ring be eliminated. The FAA reevaluated the need for the expansion of the Class B to 24–NM and decided to limit the expansion to 24–NM only to the east and west of PHL in order to encompass the extended finals to the primary runways. These extensions are required to contain the high volume of turbine-powered aircraft landing at PHL while still allowing adequate room for VFR aircraft to circumnavigate the PHL Class B airspace.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Philadelphia, PA, Class B airspace area. This action (depicted on the attached chart) modifies the lateral and vertical limits (i.e., floors) of the Class B airspace area to ensure the containment of large turbine-powered aircraft once they enter the airspace, reduce frequency congestion and controller workload, and enhance safety in the Philadelphia terminal area. The ceiling of the Philadelphia Class B airspace area remains at 7,000 feet MSL. Mileages are in nautical miles and, unless otherwise noted, are based on a radius from the PHL airport reference point (ARP) (lat. 39°52′20″ N., long. 75°14′27″ W.). The modifications of the Philadelphia Class B airspace area, by subarea, are outlined below.

Area A. This area, extending upward from the surface to 7,000 feet MSL, is expanded from the current 6-mile radius to an 8-mile radius. A cutout is incorporated in the northeast quadrant of Area A to accommodate helicopter operations.

Area B. There are no changes to Area B, which extends from 300 feet MSL to 7,000 feet MSL.

Area C. This area, which extends from 600 feet MSL to 7,000 feet MSL, remains largely unchanged except that its boundaries are extended outward to meet the new 8-mile radius of Area A.

Area D. This area extends from 1,500 feet to 7,000 feet between the 8-mile and 11-mile rings around PHL, and includes an extension out to 15 miles to the east of PHL.

Area E. Area E extends from 2,000 feet MSL to 7,000 feet MSL between the 11-mile and 15-mile rings from PHL with a cutout around 17N. This rule lowers the Class B airspace floor in this area from 3,000 feet MSL to 2,000 feet MSL.

Area F. Area F consists of two sections between the 15-mile and 20-mile rings. One section is west of PHL and the other to the east of PHL. These sections both extend from 3,000 feet MSL to 7,000 feet MSL. The Area F section located to the east of PHL is new Class B airspace. The purpose of Area F is to contain arrivals to the primary runways at PHL.

Area G. This area extends from 3,500 feet MSL to 7,000 feet MSL. It generally lies between the 15-mile and 20-mile rings, excluding the airspace in Areas F and H. The current Class B floor in most of that area is 4,000 feet MSL. Area G also creates new Class B airspace out to 20 miles to the east and south of PHL with a cutout to accommodate operations at 17N.

Area H. This area consists of two sections, extending from 4,000 feet MSL to 7,000 feet MSL, between the 20-mile and 24-mile rings, one to the east and one to the west of PHL. Area H is new Class B airspace. Its purpose is to contain arrivals to the primary runways at PHL.

Environmental Review

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this rule.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned

determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

In conducting these analyses, the FAA has determined that this final rule:

(1) Imposes minimal incremental costs and provides benefits,

(2) Is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866,

(3) Is not significant as defined in DOT's Regulatory Policies and Procedures;

(4) Will not have a significant economic impact on a substantial number of small entities;

(5) Will not have a significant effect on international trade; and

(6) Will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

These analyses are summarized below.

The Proposed Action

The action proposed in the NPRM, was to modify the Philadelphia, PA, Class B airspace area to ensure the containment of large turbine-powered aircraft within Class B airspace, reduce controller workload, and reduce the potential for midair collision in the Philadelphia terminal area.

Benefits of the Proposed Action

As discussed in the NPRM, this action would enhance safety, improve the flow of air traffic, and reduce the potential for midair collisions in the PHL terminal area. In addition this action will support the FAA's national airspace redesign goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

Costs of the Proposed Action

As described in the NPRM, the costs included the costs of general aviation aircraft that might have to fly further if this action were adopted. However, the FAA believes that any such costs would be minimal because the FAA designed the air space to minimize the effect on aviation users who would not fly in the Class B airspace. In addition the FAA held a series of meetings to solicit comments from people who thought that they might be affected by the proposal. Wherever possible the FAA included the comments from these meetings in the proposal.

Expected Outcome of the Proposal

The FAA received no comments on the FAA's requests for comments on the minimal cost determination. Therefore, the FAA has determined that this final rule is not a "significant regulatory action "as defined in Section 3(f) of Executive 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In the Initial Regulatory Flexibility Analysis the FAA determined that the proposed rule would improve safety by redefining Class B airspace boundaries and was expected to impose only minimal costs on small entities and asked for comments.

The FAA received no comments on small entity considerations.

Therefore, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA assessed the potential effect of this proposed rule in the NPRM and determined that it would have no effect on international trade. The FAA received no comments on this determination.

Therefore, the FAA has determined that this final rule will have no impact on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or

final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

AEA PA B Philadelphia, PA [Revised]

Philadelphia International Airport, PA
(Primary Airport)
(Lat. 39°52′20″ N., long. 75°14′27″ W.)
Northeast Philadelphia Airport, PA
(Lat. 40°04′55″ N., long. 75°00′38″ W.)
Cross Keys Airport, NJ
(Lat. 39°42′20″ N., long. 75°01′59″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 7,000 feet MSL within an 8-mile radius of the Philadelphia International Airport (PHL), excluding that airspace bounded by a line beginning at the intersection of the PHL 8-mile radius and the 002° bearing from PHL, thence direct to lat. 39°56′14″ N., long. 75°12′11″ W., thence direct to lat. 39°55′40″ N., long. 75°08′31″ W., thence direct to the intersection of the PHL 8-mile radius and the 061° bearing from PHL, and that airspace within and underlying Areas B and C hereinafter described.

Area B. That airspace extending upward from 300 feet MSL to and including 7,000 feet MSL, beginning at the east tip of Tinicum Island, thence along the south shore of Tinicum Island to the westernmost point, thence direct to the outlet of Darby Creek at the north shore of the Delaware River, thence along the north shore of the river to Chester Creek, thence direct to Thompson Point, thence along the south shore of the Delaware River to Bramell Point, thence direct to the point of beginning.

Area C. That airspace extending upward from 600 feet MSL to and including 7,000 feet MSL, beginning at Bramell Point, thence along the south shore of the Delaware River to Thompson Point, thence direct to the outlet of Chester Creek at the Delaware River, thence along the north shore of the Delaware River to the 8-mile radius of PHL, thence counterclockwise along the 8-mile radius to the 180° bearing from PHL, thence direct to Bramell Point.

Area D. That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within an 11-mile radius of PHL; and that airspace within 7.5 miles north and south of the Runway 27R localizer course extending from the 11-mile radius to the 15-mile radius east of PHL; excluding that airspace within a 5.8-mile radius of North Philadelphia Airport (PNE), and Areas A, B, and C.

Area E. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within a 15-mile radius of PHL, excluding that airspace within a 5.8-mile radius of PNE, and that airspace bounded by a line beginning at the intersection of the PHL 15-mile radius and the 141° bearing from PHL, thence direct to the intersection of the Cross Keys Airport (17N) 1.5-mile radius and the 212° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 257° bearing from 17N, thence direct to the intersection of the 17N 1.5-mile radius and the 341° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 011° bearing from 17N, thence direct to the intersection of the PHL 15-mile radius and the 127° bearing from PHL, and Areas A, B, C, and D.

Area F. That airspace extending upward from 3,000 feet MSL to and including 7,000 feet MSL within 7.5 miles north and south of the Runway 9R localizer course extending from the 15-mile radius west of PHL to the 20-mile radius west of PHL; and within 7.5 miles north and south of the Runway 27R localizer course extending from the 8-mile radius east of PHL to the 20-mile radius east of PHL, excluding Area D.

Area G. That airspace extending upward from 3,500 feet MSL to and including 7,000 feet MSL within a 20-mile radius of PHL, excluding that airspace south of a line beginning at the intersection of the PHL 20-mile radius and the 158° bearing from PHL, thence direct to the intersection of the PHL 20-mile radius and the 136° bearing from PHL, and that airspace bounded by a line beginning at the intersection of the PHL 20-mile radius and the 136° bearing from PHL, thence direct to the intersection of the PHL 15-mile radius and the 141° bearing from PHL, thence direct to the intersection of the Cross Keys Airport (17N) 1.5-mile radius and the 212° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 257° bearing from 17N, thence direct to the intersection of the 17N 1.5-mile radius and the 341° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 011° bearing from 17N, thence direct to the intersection of the PHL 15-mile radius and the 127° bearing from PHL, thence direct to the intersection of the PHL 20-mile radius and the 120° bearing from PHL, and Areas A, B, C, D, E and F.

Area H. That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL within 7.5 miles north and south of the Runway 9R localizer course extending from the 20-mile radius west of PHL to the 24-mile radius west of PHL; and within 7.5 miles north and south of the Runway 27R localizer course extending from the 20-mile radius east of PHL to the 24-mile radius east of PHL.

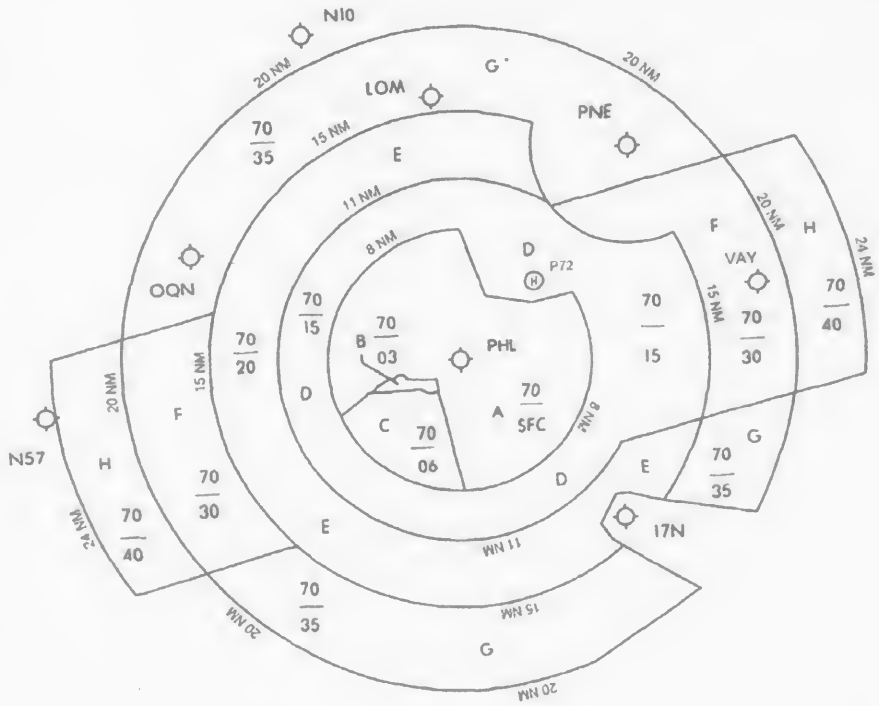
Issued in Washington, DC, on April 23, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

BILLING CODE 4910–13–P

MODIFICATION OF THE PHILADELPHIA, PA CLASS B AIRSPACE AREA
(Airspace Docket No. 08-AWA-2)



FOR INFORMATION ONLY
Not for Navigation Purposes

[FR Doc. 2013–10811 Filed 5–8–13; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0031; Airspace Docket No. 12–AWA–7]

Modification of Class C Airspace; Nashville International Airport; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Nashville International Airport, TN, Class C airspace area by removing a cutout from the surface area that was put in place to accommodate operations at an airport that is now permanently closed. The FAA is taking this action to ensure the safe and efficient operations at Nashville International Airport.

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

Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Nashville International Airport, TN, Class C airspace area (78 FR 6257). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Five comments were received.

Discussion of Comments

Four commenters wrote in support of the proposal. One commenter contended that the FAA did not provide justification for increasing the size of the Class C surface area and failed to show an actual need for additional Class C airspace. The commenter asserted that retention of the cutout allows greater options for aircraft transiting the Class C airspace area.

The FAA does not agree. The sole purpose of the surface area cutout was to allow aircraft to operate freely to and from the Cornelia Fort Airpark without the need to contact air traffic control (ATC). Since that airport is now permanently closed, the cutout serves no useful purpose. The small size, location and configuration of the cutout does not provide any significant benefit to transiting aircraft. An aircraft entering the cutout (below 2,400 feet MSL) would still need to communicate with ATC prior to entering the Class C airspace area or would be faced with tight maneuvering to avoid entering the Class C. Instances have been observed where aircraft attempting to exit the cutout have inadvertently entered the Class C airspace area. Further, the cutout boundary lies less than one mile from Nashville International Airport's final approach courses to Runways 13 and 20R, inside the final approach fix (FAF), causing concern to traffic landing on the south parallels and Runway 13. Removing the cutout ensures continued safe and efficient operations at Nashville International Airport.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Nashville International Airport Class C airspace, removing a cutout from the Class C surface area. The cutout was put in place to exclude the airspace within a 1.5 NM radius of the former Cornelia Fort Airpark from the Class C surface area. The sole purpose for the exclusion was to accommodate operations at the Airpark, which was located about 4 NM north northwest of Nashville International Airport. The Airpark is now permanently closed and the property sold for non-aviation uses. Since the original purpose of the exclusion no longer exists, the FAA is removing the words ". . . excluding that airspace within a 1.5-mile radius of lat. 36°12′00″ N., long. 86°42′10″ W. (in the vicinity of Cornelia Fort Airpark) . . ." from the Class C airspace description. This restores the Class C surface area to within a 5–NM radius of Nashville International Airport and enhances the safe and efficient management of aircraft operations at the airport.

In addition, a minor correction is made to update the geographic coordinates of the Nashville International Airport to reflect the current information in the FAA's aeronautical database. This change removes "lat. 36°07′31″ N., long. 86°40′35″ W.," and inserts "lat. 36°07′28″ N., long. 86°40′42″ W.". Except for editorial changes this rule is the same as published in the NPRM.

Class C airspace areas are published in paragraph 4000 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 C airspace area amendment in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a portion of the terminal airspace structure at Nashville International Airport, Nashville, TN.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 4000 Class C Airspace.

* * * * *

ASO TN C Nashville International Airport, TN [Amended]

Nashville International Airport, TN
(Lat. 36°07′28″ N., long. 86°40′42″ W.)

Boundaries

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of Nashville International Airport; and that airspace

extending upward from 2,100 feet MSL to and including 4,600 feet MSL within a 10-mile radius of Nashville International Airport from the 018° bearing from the airport clockwise to the 198° bearing from the airport, and that airspace extending upward from 2,400 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport from the 198° bearing from the airport clockwise to the 018° bearing from the airport.

Issued in Washington, DC, on May 1, 2013.

Ellen Crum,

Acting Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–10810 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0831; Airspace Docket No. 12–AEA–13]

Amendment of Class E Airspace; Kingston, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Kingston, NY, creating controlled airspace to accommodate new Standard Instrument Approach Procedures at Kingston-Ulster Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On January 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Kingston, NY (78 FR 6260) Docket No. FAA–2012–0831. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Kingston, NY to accommodate the new area navigation global positioning system Standard Instrument Approach Procedures developed for Kingston-Ulster Airport. Runway 15 is being extended 700 feet and the controlled airspace area is increased to within an 8.6-mile radius of the airport due to terrain in the surrounding area. Also, the geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§71.1 [Amended]

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

* * * * *

AEA NY E5 Kingston, NY [Amended]

Kingston-Ulster Airport
(Lat. 41°59′07″ N., long 73°57′52″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within an 8.6-mile radius of Kingston-Ulster Airport.

Issued in College Park, Georgia, on April 30, 2013.

Barry A. Knight,

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

[FR Doc. 2013–10815 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0258]

National Maritime Week Tugboat Races, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races in Elliott Bay, WA from 12 p.m. until 4:30 p.m. on May 11, 2013. This action is necessary to ensure the safety of all participants and spectators from the inherent dangers associated with these types of races which includes large wakes. During the enforcement period, no person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

DATES: This regulation will be enforced from 12 p.m. until 4:30 p.m. on May 11, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Nathaniel P. Clinger, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races, Seattle, WA listed in 33 CFR 100.1306 on May 11, 2013, from 12 p.m. until 4:30 p.m. This regulation can be found in the April 27, 1996, issue of the **Federal Register** (61 FR 16710).

A regulated area is established on that portion of Elliott Bay along the Seattle waterfront in Puget Sound bounded by a line beginning at: 47°37′36″ N, 122°22′42″ W; thence to 47°37′24.5″ N, 122°22′58.5″ W; thence to 47°36′08″ N, 122°20′53″ W; thence to 47°36′21″ N, 122°20′31″ W; thence returning to the origin. This regulated area resembles a rectangle measuring approximately 3,900 yards along the shoreline between Pier 57 and Pier 89, and extending approximately 650 yards into Elliott Bay. Temporary floating markers will be placed by the race sponsors to delineate the regulated area. [Datum: NAD 1983]

No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

The Coast Guard will establish a patrol consisting of active and auxiliary Coast Guard vessels and personnel in the regulated area described above. The patrol shall be under the direction of a Coast Guard officer or petty officer designated by the Captain of the Port as the Coast Guard Patrol Commander. The Patrol Commander may forbid and control the movement of vessels in this regulated area.

A succession of sharp, short blasts from whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1306 and 5 U.S.C. 552 (a).

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 24, 2013.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2013–10958 Filed 5–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0103]

Safety Zones; Annual Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone from May 24, 2013, through August 31, 2013. Enforcement of these zones is necessary and intended to ensure the safety of life on the navigable waters immediately prior to, during, and immediately after certain fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after certain fireworks events. During the enforcement period, no person or vessel may enter any safety zone without permission of the Captain of the Port.

DATES: The regulations in this notice of enforcement will be enforced at the dates and times listed below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Benjamin Nessia, Waterways Branch Chief, Marine Safety Unit Toledo, 420 Madison Ave., Suite 700, Toledo, Oh, 43604; telephone (419) 418–6040; email *Benjamin.B.Nessia@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following times for the following events:

(1) *Put-In-Bay Fourth of July Fireworks, Put-In-Bay, OH.* The safety zone listed in 33 CFR 165.941(a)(5) will be enforced from 9:45 p.m. until 10:15 p.m. on July 4, 2013. In case of inclement weather on July 4, 2013, this safety zone will be enforced from 9:45 p.m. until 10:15 p.m. on July 5, 2013.

(2) *Toledo Country Club Memorial Celebration and Fireworks, Toledo, OH.* The safety zone listed in 33 CFR 165.941(a)(15) will be enforced from 9:30 p.m. until 10:30 p.m. on May 24, 2013.

(3) *Luna Pier Fireworks Show, Luna Pier, MI.* The safety zone listed in 33 CFR 165.941(a)(16) will be enforced from 9:30 p.m. until 10:30 p.m. on July 6, 2013.

(4) *Toledo Country Club 4th of July Fireworks, Toledo, OH.* The safety zone listed in 33 CFR 165.941(a)(17) will be enforced from 9:30 p.m. to 10:30 p.m. on June 28, 2013.

(5) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in 33 CFR 165.941(a)(21) will be enforced from 9:45 p.m. to 10:15 p.m. on July 3, 2013. In the event of inclement weather on July 3, 2013, this regulation will be enforced from 9:45 p.m. to 10:15 p.m. on July 5, 2013.

(6) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in 33 CFR 165.941(a)(28) will be enforced from 9:10 p.m. to 9:40 p.m. on August 31, 2013.

(7) *Toledo 4th of July Fireworks, Toledo, OH.* The safety zone listed in 33

CFR 165.941(a)(54) will be enforced from 9:30 p.m. to 10:00 p.m. on July 4, 2013.

(8) *Bay Point Fireworks Display, Marblehead, OH.* The safety zone listed in 33 CFR 165.941(a)(58) will be enforced from 10:00 p.m. to 10:20 p.m. on July 6, 2013.

(9) *Lakeside July 4th Fireworks, Lakeside, OH.* The safety zone listed in 33 CFR 165.941(a)(20) will be enforced from 9:45 p.m. to 10:30 p.m. on July 4, 2013.

(10) *Lakeside Labor Day Fireworks, Lakeside, OH.* The safety zone listed in 33 CFR 165.941(a)(27) will be enforced from 9:45 p.m. to 10:30 p.m. on August 31, 2013.

(11) *Catawba Island Club Memorial Day Fireworks, Catawba Island, OH.* The safety zone listed in 33 CFR 165.941 (a)(56) will be enforced from 9:45 p.m. to 10:15 p.m. on May 26, 2013.

(12) *Washington Township Summerfest Fireworks, Toledo, OH.* The safety zone listed in 33 CFR 165.941 (a)(2) will be enforced from 9:00 p.m. to 10:45 p.m. on June 22, 2013

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through a safety zone may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port Detroit before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port Detroit may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.23 and 5 U.S.C. 552(a). If the Captain of the Port Detroit determines that the enforcement of these safety zones need not occur as stated in this notice, he or she may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: April 12, 2013.

J.E. Ogden,

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

[FR Doc. 2013–10961 Filed 5–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0323]

RIN 1625–AA00

Safety Zone; High Water Conditions; Illinois River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Illinois River from Mile Marker 187.2 to Mile Marker 285.9. This zone is intended to place restrictions on vessels due to current extreme high-water conditions. This safety zone is necessary to protect the general public, levee systems, vessels, and tows from the hazards associated with flood waters and potential catastrophic failure of the Marseilles Dam.

DATES: This rule will be enforced with actual notice from April 26, 2013, until May 9, 2013. This rule is effective in the Code of Federal Regulations from May 9, 2013 until May 31, 2013.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2013–0323 and are available online at *www.regulations.gov*. This material is also available for inspection or copying at two locations: 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 and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148 or by email at *Joseph.P.McCollum@USCG.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

On April 18, 2013, in light of dangerously high water conditions, the Coast Guard established a safety zone on the Illinois River from Mile Marker 187.2 to Mile Marker 285.9 (see USCG–2013–0323 docket for a copy of the previous regulation). The safety zone restricted recreational and commercial vessel transits in the zone without the permission of the Captain of the Port Lake Michigan. The safety zone has been effective and enforced since April 18, 2013 and expires on April 30, 2013.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard is issuing this rule in response to an immediate and emergency situation which involves river flooding—an act of nature. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect persons and vessels from the hazards, which are discussed further below, associated with extreme high water on the Illinois River.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Heavy and extended periods of rain during the first half of the month of April have resulted in dangerously high

waters within the Illinois River. High-water conditions are hindering navigation due to excessive debris and rapidly-flowing water. Current high-water conditions also threaten to damage critical infrastructure including river levees.

On April 18, 2013, as a result of these conditions, the Coast Guard established a safety zone on the Illinois River from Mile Marker 187.2 to Mile Marker 285.9 restricting recreational vessel transit and commercial vessel fleeting in the safety zone without the permission of the Captain of the Port. Since April 18, seven barges broke loose from their tow during an approach to the Marseilles Lock canal and lodged against the Marseilles Dam. Salvage operations are underway to recover the barges and a structural survey of the dam needs to be completed. In order to protect vessel traffic above the dam and ensure that salvage operations remain unimpeded a safety zone between mile marker 244 and mile marker 252 is being enforced to prohibit all vessels that are not directly engaged in the salvage operations.

In response to these changes and to allow commerce to resume on the river, the Captain of the Port is issuing this temporary final rule. Enforcement of the restrictions in the prior temporary safety zone will be suspended.

The Captain of the Port, Sector Lake Michigan, has established the restrictions named within this regulation in response to the safety risks presented by the high water conditions, the potentially compromised dam, and ongoing salvage operations. The safety risks associated with these conditions include loss of vessel control, sinking, swamping, collisions, and allisions.

C. Discussion of Rule

The Captain of the Port, Sector Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this rule establishes a safety zone that encompasses all waters of the Illinois River from Mile Marker 187.2 to Mile Marker 285.9. This rule will place restrictions on certain vessels so that no recreational vessel may transit this portion of the Illinois River. Furthermore, this rule will prohibit commercial vessels from transiting an area of the safety zone in which salvage operations are being conducted except by permission of the Captain of the Port, Sector Lake Michigan. This rule is effective and will be enforced from April 26, 2013, until May 31, 2013.

The Captain of the Port Lake Michigan will notify the public that this safety zone is being enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16 or by contacting the Coast Guard Sector Lake Michigan Command Center at (414) 747–7182.

E. Regulatory Analysis

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short amount of time. Also, this safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port, Sector Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor within the portions of the Illinois River to which this regulation applies.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for a limited time during dangerous high-water conditions on the Illinois River. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule to that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

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

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone, and thus, paragraph 34(g) of figure 2–1 in Commandant Instruction M16475.lD applies.

An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

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

■ 2. Add § 165.T09–0323 to read as follows:

§ 165.T09–0323 Safety Zone; High Water Conditions, Illinois River.

(a) *Location.* All waters of the Illinois River from Mile Marker 187.2 to Mile Marker 285.9.

(b) *Effective Period.* This safety zone will be effective and enforced from April 26, 2013, until May 31, 2013.

(c) *Regulations.* (1) Recreational vessels are prohibited from entering, transiting, or anchoring within this safety zone unless authorized by the Captain of the Port, Sector Lake Michigan.

(2) All vessels are prohibited from laying up on levees.

(3) Commercial vessels are authorized to transit, anchor, and conduct operations within this safety zone except from Mile Marker 244 to Mile Marker 252. Commercial vessels intending to transit this area must receive authorization from the Captain of the Port Sector Lake Michigan, or his designated representative. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16, or by calling (630) 336–0300. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative. The "on-scene representative" of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

Dated: April 26, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2013–10957 Filed 5–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0199]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during specified periods

from May 25, 2013, through June 29, 2013. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after various fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced at the times specified in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.Mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks* with times and dates as follows:

May 25, 2013, from 10:00 p.m. through 10:30 p.m.;
May 29, 2013, from 9:15 p.m. through 9:45 p.m.;
June 1, 2013, from 10:00 p.m. through 10:30 p.m.;
June 5, 2013, from 9:15 p.m. through 9:45 p.m.;
June 8, 2013, from 10:00 p.m. through 10:30 p.m.;
June 12, 2013, from 9:15 p.m. through 9:45 p.m.;
June 15, 2013, from 10:00 p.m. through 10:30 p.m.;
June 19, 2013, from 9:15 p.m. through 9:45 p.m.;
June 21, 2013, from 10:00 p.m. through 10:30 p.m.;
June 26, 2013, from 9:15 p.m. through 9:45 p.m.;
June 29, 2013, from 10:00 p.m. through 10:30 p.m.;

All vessels must obtain permission from the Captain of the Port, Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port, Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: April 30, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–10964 Filed 5–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Priority. National Institute on Disability and Rehabilitation Research—Traumatic Brain Injury Model Systems Centers Collaborative Research Project

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

[CFDA Numbers: 84.133A–7.]

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for a Disability and Rehabilitation Research Project (DRRP) on Traumatic Brain Injury Model Systems Centers Collaborative Research Project. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve outcomes among individuals with traumatic brain injuries.

DATES: This priority is effective June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

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

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to improve the health and functioning, employment, and community living and participation of individuals with disabilities through comprehensive programs of research, engineering, training, technical assistance, and knowledge translation and dissemination. The Plan reflects NIDRR's commitment to quality, relevance, and balance in its programs to ensure appropriate attention to all aspects of well-being of individuals with disabilities and to all types and degrees of disability, including low-incidence and severe disabilities.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects

The purpose of the DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs

carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority in the **Federal Register** on February 28, 2013 (78 FR 13600). That notice contained background information and our reasons for proposing this particular priority.

Public Comment: In response to our invitation in the NPP, we did not receive any comments on the proposed priority.

However, there is one difference between the proposed priority and this final priority. Because a new version of NIDRR's Plan was published since the publication of the proposed priority, we have updated the reference to the Plan in paragraph (b) of the final priority. The new Plan modifies NIDRR's research domains to include only the following: health and function, community living and participation, and employment. Technology is no longer included in the Plan, or in this final priority, as a research domain in itself. Instead, technology is a tool, and a major area of research and development, for improved outcomes in health and function, community living and participation, and employment for individuals with disabilities.

Final Priority

Traumatic Brain Injury Model Systems Centers Collaborative Research Project

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of Disability and Rehabilitation Research Projects (DRRPs) to serve as Traumatic Brain Injury Model Systems (TBIMS) multi-site collaborative research project. To be eligible under this priority, an applicant must have received a grant under the TBIMS centers priority (see *https://www.federalregister.gov/articles/2012/06/11/2012-14115/disability-and-rehabilitation-research-projects-and-centers-program-traumatic-brain-injury-model*). Each TBIMS multi-site collaborative research project must be designed to contribute to evidence-based rehabilitation interventions and clinical practice guidelines that improve the lives of individuals with traumatic brain injuries (TBIs) through research, including the testing of approaches to treating TBIs or the assessment of the outcomes of individuals with TBIs. Each TBIMS multi-site collaborative research project must contribute to this outcome by—

(a) Collaborating with three or more of the NIDRR-funded TBIMS centers (for a minimum of four TBIMS sites). In addition to the required TBIMS sites, applicants may also propose to include other TBI research sites that are not currently participating in the TBIMS program;

(b) Conducting multi-site research on questions of significance to TBI rehabilitation, using clearly identified research designs. The research must focus on outcomes in one or more of the following domains identified in NIDRR's Long-Range Plan for Fiscal Years 2013–2017, published in the **Federal Register** on April 4, 2013 (78 FR 20299): health and function, community living and participation, and employment;

(c) Demonstrating the capacity to carry out a multi-site collaborative research project, including administrative capabilities, experience with management of multi-site research protocols, and demonstrated ability to maintain standards for quality and confidentiality of data gathered from multiple sites;

(d) Addressing the needs of people with disabilities, including individuals from traditionally underserved populations;

(e) Coordinating with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences; and

(f) Ensuring participation of individuals with disabilities in conducting TBIMS research.

Types of Priorities

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

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

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

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

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the DRRP envisioned by the final priority have been completed successfully. Establishing a DRRP based on the final priority will generate new knowledge through research and improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with traumatic brain injuries to fully participate in their communities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 6, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11081 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Numbers: 84.133B–3, 84.133B–4, 84.133B–5, and 84.133B–6]

Final Priorities; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce priorities for Rehabilitation Research and Training Centers (RRTCs) on Community Living and Participation for Individuals with Physical Disabilities (Priority 1), Employment of Individuals with Physical Disabilities (Priority 2), Health and Function of Individuals with Intellectual and Developmental Disabilities (Priority 3), and Community Living and Participation for Individuals with Intellectual and Developmental Disabilities (Priority 4). If an applicant proposes to conduct research under these priorities, the research must be focused on one of the four stages of research defined in this notice. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve outcomes among individuals with disabilities.

DATES: *Effective Date:* These priorities are effective June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and

related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priorities in the **Federal Register** on February 12, 2013 (78 FR 9869). That notice contained background information and our reasons for proposing these particular priorities.

There are differences between the notice of proposed priorities and this notice of final priorities as discussed in the *Analysis of Comments and Changes* of this notice. *Public Comment:* In response to our invitation in the notice of proposed priorities, eight parties submitted comments on the proposed priorities.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities follows.

RRTC on Community Living and Participation for Individuals With Physical Disabilities (Priority 1)

We received no comments on this priority.

RRTC on Employment of Individuals With Physical Disabilities (Priority 2)

Comment: One commenter suggested that NIDRR modify the priority to focus research on initiatives for the employment of people with physical disabilities by private industry and entrepreneurs.

Discussion: Nothing in the priority precludes an applicant from proposing research on the efforts of private industry and entrepreneurs to hire people with disabilities. However, NIDRR does not wish to further specify the research requirements in the way suggested by the commenter and thereby limit the number and breadth of applications submitted under this priority. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: Two commenters noted that this employment-focused RRTC priority is aimed only at improving outcomes for individuals with physical disabilities. These commenters discussed the importance of employment outcomes for individuals with intellectual and developmental disabilities (ID/DD) and requested that individuals with ID/DD be included in the target population for this employment priority.

Discussion: By focusing the priority on employment outcomes for individuals with physical disabilities, NIDRR did not intend to convey that employment is not important to individuals in other target populations. Rather, we are following the framework described in NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan), in which we discuss our commitment to funding RRTCs that are balanced across NIDRR's three domains (employment, health and function, and community living and participation), and across broad target populations. In future years, NIDRR plans to fund employment centers that are focused on each of the specific target populations described in the Plan, including individuals with ID/DD.

Changes: None.

RRTC on Health and Function of Individuals With Intellectual and Developmental Disabilities (Priority 3)

We received no comments on this priority.

RRTC on Community Living and Participation for Individuals With Intellectual and Developmental Disabilities (Priority 4)

Comment: Four commenters discussed the importance of employment outcomes for individuals with ID/DD. These commenters requested that NIDRR include employment as a specific area of community living research, either by expanding the scope of paragraph (a) or by expanding the list of priority areas under (a) to include employment.

Discussion: In our Plan, NIDRR distinguishes between "employment outcomes" and "community living and participation outcomes." These outcome domains define specific fields of research and different service delivery systems and programs. In future years, NIDRR plans to fund RRTCs focused on the employment of the target populations identified in the Plan, including individuals with ID/DD. Under this priority, NIDRR seeks to fund research, training, technical assistance, and related activities that are focused specifically on improving community living and participation outcomes for individuals with ID/DD. While some applicants may choose to include employment as an outcome that is integral to community living and participation, we do not want to limit the number and breadth of applications submitted under this priority by requiring all applicants to do so. The peer review process will determine the merits of each application.

Changes: None.

Comments on All Four Priorities

Comment: Two commenters noted that each of the four RRTC priorities includes a requirement (paragraph (c)(ii)) to provide training to rehabilitation providers and other disability service providers, in order to facilitate more effective delivery of services. These commenters suggested that by limiting the recipients of the required training to service providers, NIDRR may be limiting the knowledge that is available to consumers, and reinforcing the knowledge barrier between service providers and consumers. These commenters suggested that NIDRR modify paragraph (c)(ii) in each priority to require the RRTCs to provide training to consumers and service providers.

Discussion: The requirements in paragraph (c)(ii) are based directly on the Federal regulations that govern our administration of the RRTC program. The regulations in 34 CFR 350.22(b)(1) require that training be provided to

rehabilitation personnel or rehabilitation research personnel. We also note that recipients of training under the RRTC program may include rehabilitation or rehabilitation research personnel who have disabilities. At the same time, nothing in these regulations or in the priorities precludes applicants from proposing to provide training to individuals with disabilities, whether or not they are rehabilitation or rehabilitation research personnel.

Changes: None.

Comment: Two commenters raised questions about the broad target populations that are identified in each of the four priorities. The commenters noted that people with traumatic brain injury (TBI) or stroke have acquired cognitive or intellectual disabilities but often receive clinical services from rehabilitation professionals with expertise in physical disabilities. The commenters asked whether it would be more appropriate to submit an application under the priority for an RRTC on community living and participation for people with physical disabilities (Priority 1) or the priority for an RRTC on community living and participation for people with intellectual and developmental disabilities (Priority 4). The commenters suggested that NIDRR clarify the language related to these target populations so that applicants apply under the correct priority.

Discussion: Individuals with disabling conditions, including TBI and stroke, could be considered in multiple target populations, including individuals with physical disabilities. An individual experiencing TBI as a child or youth might also be considered an individual with intellectual or developmental disabilities, assuming the individual meets the diagnostic standards. NIDRR purposefully outlines broad categories of target populations in its Plan to allow applicants the flexibility to choose the category that is most relevant to their research questions and purposes. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: Four commenters noted their support for the focus on transition in each of the four priorities. These commenters noted that transition is a process that is relevant to youth and young adults with disabilities who are moving from childhood roles into adult roles. The commenters suggested that NIDRR modify the language in paragraph (a)(v) of each priority to include transition-aged youth and young adults.

Discussion: NIDRR agrees that the process of transitioning from youth to adult roles involves both youth and young adults and will modify paragraph (a)(v) accordingly.

Changes: NIDRR has modified paragraph (a)(v) in each priority to include transition-aged youth and young adults.

Comments on the Definitions

Comment: One commenter noted that the definitions of research stages are similar to those used by the Department of Education's Institute of Education Sciences (IES). This commenter asked NIDRR to provide information that will allow applicants and reviewers to differentiate between the research stages that are defined by IES and NIDRR.

Discussion: NIDRR consulted with IES about its stages of research as we developed the stages described in this notice. Although there are differences in terminology, the two categorizations of research stages are similar in that they describe a progression of research that purposefully builds knowledge toward the development, evaluation, and widespread implementation of interventions to improve outcomes for defined target populations. IES developed its stages for application to research related to education, which generally takes place within educational system and school settings. NIDRR developed its stages, on the other hand, for application in a much wider variety of service delivery settings, including the community, rehabilitation service-delivery institutions, vocational rehabilitation settings, and many other settings in which individuals with disabilities live and participate.

Changes: None.

Comment: Two commenters noted that the research stages, as defined, are appropriate only for different stages of research on interventions. They noted that the focus on interventions does not allow applicants to describe the maturity of, or the stages involved in, other kinds of research, such as observational research or research toward the development of diagnostic or outcome assessment tools. The commenters suggested that NIDRR should acknowledge that non-intervention research can be conducted in stages and develop and publish "stages of research" that are not focused on interventions. The commenters stated that if NIDRR does not develop these additional stages of research, applicants who propose research that does not fit in the current stages should be exempt from identifying a research stage. The commenters expressed concern that research that is not focused on interventions may not be assessed properly by peer reviewers or may be seen by peer reviewers as less worthy of funding.

Discussion: NIDRR's statutory mandate and mission compels us to support research that produces interventions (e.g., practices, programs, policies) with positive effects (improved outcomes in community living and participation, employment, health and function) on the lives of individuals with disabilities. In this context, we have provided these research stages as basic guidelines to help researchers think about, plan, and describe how their research is aligned with our broad goal of improving outcomes for individuals with disabilities.

NIDRR does not plan to develop and publish "stages of research" that are not focused on interventions. We recognize that research toward the development of a new disability outcomes measure, for example, may be in an advanced or mature stage of measure development. Applicants are free to describe the maturity, or staging of, their proposed research using any framework that they think is appropriate. However, NIDRR believes that all disability and rehabilitation research can and should be categorized under the stages described in this notice so that it is clear how the research that we sponsor is aligned with the practical intent of our authorizing legislation and our mission.

NIDRR views no single research stage as more important than another. By providing a framework for applicants to describe how their research is currently needed at a particular stage and to describe the foundation laid for it at earlier stages of research, we aim to help propel research from exploratory stages to scale-up stages in which benefits can be experienced by large numbers of individuals with disabilities. NIDRR is actively developing peer reviewer orientation strategies to ensure that peer reviewers understand that NIDRR values high-quality research at each of the stages described in this notice.

Changes: None.

Comment: Three commenters asked NIDRR to provide additional details in the definitions of the four research stages, noting that many research projects could be placed in more than one stage. Similarly, one commenter noted that the terms used to describe the "scale-up evaluation" stage of research could be interpreted broadly and that this category could overlap substantially with the "intervention efficacy" stage. All three commenters asked for further clarification of the definitions of the stages or for illustrations and examples of each.

Discussion: NIDRR has developed these research stages as broad guidelines

to help researchers think about, plan, and describe how their research furthers the aim of improving outcomes for individuals with disabilities. Within the definition of each stage, we have purposefully used language that allows applicants to categorize their proposed research in more than one stage depending on the specifics of their planned work. For example, throughout each definition, we use the word "may" instead of "must." In paragraph (b) of each priority, NIDRR allows applicants the flexibility to propose "research that can be categorized under more than one of the research stages, or research that progresses from one stage to another." With this flexibility, applicants may describe and justify the stage or stages of research that they are proposing. The peer review process will determine the merits of each application.

Changes: None.

Final Priorities

Background

This notice contains four priorities. Each priority reflects a major area or domain of NIDRR's research agenda (community living and participation, health and function, and employment), combined with a specific broad disability population (physical disability or intellectual and developmental disability).

Definitions

The research that is proposed under these priorities must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of these priorities, the stages of research, which we published for comment on January 25, 2013, are:

(i) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(ii) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(iii) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support "scaling-up" an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(iv) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Priority 1—RRTC on Community Living and Participation for Individuals With Physical Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Community Living and Participation for Individuals with Physical Disabilities.

The RRTC must contribute to maximizing the community living and participation outcomes of individuals with physical disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with physical disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with physical disabilities:

(i) Technology to improve community living and participation outcomes for individuals with physical disabilities.

(ii) Individual and environmental factors associated with improved community living and participation outcomes for individuals with physical disabilities.

(iii) Interventions that contribute to improved community living and participation outcomes for individuals with physical disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for individuals with physical disabilities.

(iv) Effects of government practices, policies, and programs on community living and participation outcomes for individuals with physical disabilities.

(v) Practices and policies that contribute to improved community living and participation outcomes for transition-aged youth and young adults with physical disabilities.

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided at the beginning of the Final Priorities section in this notice.

(c) Serving as a national resource center related to community living and participation for individuals with physical disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with physical disabilities and their representatives, and other key stakeholders;

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation providers and other disability service providers, to facilitate more effective delivery of services to individuals with physical disabilities. This training may be provided through conferences,

workshops, public education programs, in-service training programs, and similar activities;

(iii) Disseminating research-based information and materials related to community living and participation for individuals with physical disabilities; and

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Priority 2—RRTC on Employment of Individuals With Physical Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Employment of Individuals with Physical Disabilities.

The RRTC must contribute to maximizing the employment outcomes of individuals with physical disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with physical disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with physical disabilities:

(i) Technology to improve employment outcomes for individuals with physical disabilities.

(ii) Individual and environmental factors associated with improved employment outcomes for individuals with physical disabilities.

(iii) Interventions that contribute to improved employment outcomes for individuals with physical disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for individuals with physical disabilities.

(iv) Effects of government practices, policies, and programs on employment outcomes for individuals with physical disabilities.

(v) Practices and policies that contribute to improved employment outcomes for transition-aged youth and young adults with physical disabilities.

(vi) Vocational rehabilitation (VR) practices that contribute to improved employment outcomes for individuals with physical disabilities.

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided at the beginning of the Final Priorities section in this notice.

(c) Serving as a national resource center related to employment for individuals with physical disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with physical disabilities and their representatives, and other key stakeholders.

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation providers and other disability service providers, to facilitate more effective delivery of employment services and supports to individuals with physical disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities.

(iii) Disseminating research-based information and materials related to employment for individuals with physical disabilities.

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Priority 3—RRTC on Health and Function of Individuals With Intellectual and Developmental Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on the Health and Function of Individuals with Intellectual and Developmental Disabilities.

The RRTC must contribute to maximizing the health and function outcomes of individuals with intellectual and/or developmental disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with intellectual and developmental disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with intellectual and developmental disabilities:

(i) Technology to improve health and function outcomes for individuals with intellectual and developmental disabilities.

(ii) Individual and environmental factors associated with improved access to rehabilitation and health care and improved health and function outcomes for individuals with intellectual and developmental disabilities.

(iii) Interventions that contribute to improved health and function outcomes for individuals with intellectual and developmental disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for the specified population.

(iv) Effects of government practices, policies, and programs on health care access and on health and function outcomes for individuals with intellectual and developmental disabilities.

(v) Practices and policies that contribute to improved health and function outcomes for transition-aged youth and young adults with intellectual and developmental disabilities.

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided at the beginning of the Final Priorities section in this notice.

(c) Serving as a national resource center related to health and function for individuals with intellectual and developmental disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with intellectual and developmental disabilities and their representatives, and other key stakeholders.

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation providers and other disability service providers, to facilitate more effective delivery of services to individuals with intellectual and developmental disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities.

(iii) Disseminating research-based information and materials related to health and function for individuals with intellectual and developmental disabilities.

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Priority 4—RRTC on Community Living and Participation for Individuals With Intellectual and Developmental Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Community Living and Participation for Individuals with Intellectual and Developmental Disabilities.

The RRTC must contribute to improving the community living and participation outcomes of individuals with intellectual and developmental disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with intellectual and developmental disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with intellectual and developmental disabilities:

(i) Technology to improve community living and participation outcomes for individuals with intellectual and developmental disabilities.

(ii) Individual and environmental factors associated with improved community living and participation outcomes for individuals with intellectual and developmental disabilities.

(iii) Interventions that contribute to improved community living and participation outcomes for individuals with intellectual and developmental disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for individuals with disabilities.

(iv) Effects of government practices, policies, and programs on community living and participation outcomes for individuals with intellectual and developmental disabilities.

(v) Practices and policies that contribute to improved community living and participation outcomes for transition-aged youth and young adults with intellectual and developmental disabilities.

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided at the beginning of the Final Priorities section in this notice.

(c) Serving as a national resource center related to community living and participation for individuals with intellectual and developmental disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with intellectual and developmental disabilities and their representatives, and other key stakeholders.

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation providers and other disability service providers, to facilitate more effective delivery of services to individuals with intellectual and developmental disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities.

(iii) Disseminating research-based information and materials related to community living and participation for individuals with intellectual and developmental disabilities.

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Types of Priorities

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

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

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

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

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final priorities only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the ones envisioned by the final priorities have been completed successfully. Establishing new RRTCs based on the final priorities will generate new knowledge through research and improve the lives of individuals with disabilities. The new RRTCs will provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 6, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11086 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3002

[Order No. 1705; Docket No. RM2013–3]

Agency Organization

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is following up on a previous rulemaking by amending the description of its organizational functions in its regulations. It is also replacing its official seal. The changes to functional descriptions conform to expanded responsibilities under a postal reform law. Formal adoption of the new official seal also conforms to the postal reform law. Given the administrative nature of the changes, comments are not required or requested.

DATES: *Effective* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: *Regulatory history:* 72 FR 33165 (June 15, 2007).

Table of Contents

I. Background

This final rule amends the Postal Regulatory Commission's organizational description, 39 CFR part 3002, by revising regulations that describe the agency's jurisdiction, seal, and individual office components. This rule reflects changes to the Commission's organization since the passage of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006).

The PAEA transformed the Postal Rate Commission into the Postal Regulatory Commission, repealed several key sections of title 39 of the United States Code, and added a number of new statutory provisions to title 39. The result was a major change in the Commission's regulatory responsibilities and authorities. In response to the changes made by the PAEA, the Commission changed its organizational structure to reflect its responsibilities under the PAEA. These amendments to 39 CFR part 3002 reflect these organizational changes.

II. Changes to Part 3002

The changes adopted in this order amend descriptions to reflect present Commission structure. The following list summarizes the impact of this order on the provisions of 39 CFR part 3002 by providing a section-by-section analysis of the amended portions of part 3002. In addition, below the signature of the Secretary at the end of this order are the amended sections of part 3002 reproduced in their entireties.

Rules 3002.2(a) and (b) are revised to read as set forth in the regulatory text of this final rule.

The indefinite suspension of Rule 3002.3 is lifted.

Rule 3002.3(a) is amended by replacing "Postal Rate Commission" with "Postal Regulatory Commission."

Rule 3002.3(b)(1) is revised to read as set forth in the regulatory text of this final rule.

Rule 3002.3(b)(2) is amended by replacing "Postal Rate Commission" with "Postal Regulatory Commission" and by replacing the former seal with the current seal.

Rule 3002.3(c)(1) is amended by replacing "Postal Rate Commission" with "Postal Regulatory Commission" and by deleting the word "therefore."

Rule 3002.3(c)(2) is amended by replacing "Postal Rate Commission" with "Postal Regulatory Commission."

Rule 3002.10(a) is amended by replacing "the Postal Reorganization Act (84 Stat. 719, title 39, U.S.C.)" with "the Postal Accountability and Enhancement Act (39 U.S.C. 501)" and by replacing "U.S. Government" with "federal government".

Rule 3002.10(c) is amended by replacing "and the staff components described in §§ 3001.4, 3001.5, 3001.6 and 3001.7" with "and staff" and "§ 3001.9" with "§ 3001.9 of this chapter", and by deleting "a library containing legal and technical reference materials;".

Rule 3002.11 is revised to read as set forth in the regulatory text of this final rule.

Rule 3002.12 is renamed "Office of Accountability and Compliance".

Rule 3002.12(a) is amended by replacing "Office of Rates, Analysis, and Planning" with "Office of Accountability and Compliance"; by deleting "(as opposed to legal)"; and by adding "in both domestic and international matters, including those governed by the Universal Postal Union" to the end of the sentence.

The first sentence of Rule 3002.12(b) is amended by replacing "This office" with "The Office of Accountability and Compliance" and "reviewing the record of rate and classification requests" with "the review of rate changes, negotiated service agreements, classification of products, the Annual Compliance Determination, the Annual Report, changes to postal services".

Rule 3002.12(b)(3) is amended by replacing "by the operational characteristics" with "by operational characteristics, changes in volume, and changes in other relevant factors".

Rule 3002.12(c) is revised to read as set forth in the regulatory text of this final rule.

Rule 301.12(d) is amended by replacing "The office" with "The Office of Accountability and Compliance".

Rule 3002.13 is revised to read as set forth in the regulatory text of this final rule.

Rule 3002.14 is renamed "The Public Representative".

Rule 3002.14 is revised to read as set forth in the regulatory text of this final rule.

Rule 3002.15 is renamed "Office of Public Affairs and Government Relations."

Rule 3002.15 and 3002.16 are revised to read as set forth in the regulatory text of this final rule.

Appendix A to Part 3002 is removed.

III. Effective Date

Notice and comment are not required under the Administrative Procedure Act when a rulemaking involves "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b). Since these changes concern the Commission's rules of agency organization, notice and opportunity for public comment are not required. *See also* 39 CFR 3001.41(e) (stating that "[e]xcept when notice or hearing is required by statute, the Commission may issue at any time rules of organization...without notice or public procedure").

Generally, a rule becomes effective not less than 30 days after publication in the **Federal Register**. 39 CFR 3001.41(a). Finding no reason to deviate from the general rule, this final rule shall be effective 30 days following publication in the **Federal Register**.

IV. Conclusion

In consideration of the foregoing, the Commission adopts the changes to part 3002 appearing below the Secretary's signature in this order.

It is ordered:

1. 39 CFR part 3002 is hereby amended as discussed in this order.

2. Amendments listed in this order are effective 30 days following publication of this order in the **Federal Register**.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3002

Organization and functions (Government agencies), Seals and insignia.

By the Commission.

Issued: April 26, 2013.

Ruth Ann Abrams,

Acting Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission revises 39 CFR part 3002 to read as follows:

PART 3002—ORGANIZATION

Sec.

Authority: 39 U.S.C. 503; 5 U.S.C. 552.

§ 3002.1 Purpose.

This part is published in compliance with 5 U.S.C. 552(a)(1) and constitutes a general description of the Postal Regulatory Commission.

§ 3002.2 Statutory functions.

(a) *Areas of jurisdiction.* The Commission develops and maintains regulations for a modern system of rate regulation, including maintaining the market dominant and competitive product lists in the Mail Classification Schedule and ensuring that rates meet the requirements of 39 U.S.C. 3622 and 3633. The Commission consults with the Postal Service on delivery service standards and performance measures and with the Department of State on international postal policies. The Commission adjudicates rate and service complaints filed pursuant to 39 U.S.C. 3662 and offers advisory opinions on proposed changes to postal services pursuant to 39 U.S.C. 3661. Pursuant to 39 U.S.C. 3651, the Commission provides an annual report to the President and Congress, and pursuant to 39 U.S.C. 3653, the Commission issues an annual compliance determination to assess whether the Postal Service's rates, fees, and services comport with the requirements of title 39. Pursuant to 39 U.S.C. 404(d)(5), the Commission acts on postal patrons' appeals concerning Postal Service decisions to close or consolidate post offices.

(b) *Public participation.* Interested persons may participate in formal proceedings described in §§ 3001.17 and 3001.18 of this chapter as formal intervenors (§ 3001.20 of this chapter), limited participators (§ 3001.20a of this chapter), or commenters (§ 3001.20b of this chapter). Pursuant to 39 U.S.C. 3662(a) and part 3030 of this chapter, any interested person may lodge rate and service complaints with the Commission. Persons served by a post office that the Postal Service decides to close or consolidate may appeal such determinations in accordance with 39 U.S.C. 404(d) and part 3025 of this chapter.

§ 3002.3 Official seal.

(a) *Authority.* The Seal described in this section is hereby established as the official seal of the Postal Regulatory Commission.

(b) *Description.* (1) On a gold color (yellow) pentagon device, the base-line formed as a "V," edged with a black border, a black triangle point down and between the inscription at top "Postal Regulatory Commission" in white letters and in base at the point of the triangle three Celeste mullets two, two

and one, the American Eagle with branch and arrows derived from the Great Seal of the United States charged on the breast with the Commission's earlier round seal inscribed "Postal Regulatory Commission" and the date "2006", all in gold (yellow).

(2) The official seal of the Postal Regulatory Commission is modified when reproduced in black and white and when embossed, as it appears in this section.

(c) *Custody and authorization to affix.* (1) The seal is the official emblem of the Postal Regulatory Commission and its use is permitted only as provided in this part.

(2) The seal shall be kept in the custody of the Secretary and is to be used to authenticate records of the Postal Regulatory Commission and for other official purposes.

(3) Use by any person or organization outside of the Commission may be made only with the Commission's prior written approval. Such request must be made in writing to the Secretary.

§§ 3002.4–3002.9 [Reserved]

§ 3002.10 The Commission and its offices.

(a) *The Commissioners.* The Postal Regulatory Commission is an independent establishment of the executive branch of the federal government created by the Postal Accountability and Enhancement Act (39 U.S.C. 501).

(b) *The Chairman and Vice-Chairman.* The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the offices and employees of the Commission. He/She has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission shall elect annually a member of the Commission to serve as Vice-Chairman of the Commission for a term of one year or until a successor is elected. In case of a vacancy in the Office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, the Vice-Chairman, unless otherwise directed by the Chairman, shall have the administrative responsibilities and duties of the Chairman during the period of vacancy, absence, or inability.

(c) The Commission's offices are located at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001. On these premises, the Commission maintains offices for Commissioners and staff; a docket room where documents may be filed with the Commission pursuant to § 3001.9 of this chapter and examined by interested persons, a public reading room where the Commission's public records are available for inspection and copying; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its Web site at *http://www.prc.gov.*

§ 3002.11 Office of Secretary and Administration.

(a) The incumbent head of the office utilizes the title of "Secretary".

(b) The Office of Secretary and Administration is responsible for the Commission's budget and accounting. In this role, the Office of Secretary and Administration develops, implements, and administers the Commission's financial management system and accounting activities including those relating to the budget and the payroll; is responsible for the Commission's strategic planning; and serves as the point of contact for all Commission contracts and audits.

(c) The Office of Secretary and Administration is responsible for the Commission's human resources and personnel. In this role, the Office of Secretary and Administration is responsible for Commission employee hiring, training, travel, personnel policy and compliance, and human capital planning. In addition, the Office of Secretary and Administration serves as an Equal Employment Opportunity Officer for the Commission and manages the Commission's continuity of operations planning.

(d) The Office of Secretary and Administration manages the Commission's records, including the Commission's seal, administrative policies, orders, reports, and official correspondence. In this role, the Office

of Secretary and Administration manages the Commission's dockets and docket room, Web site, reference materials, inter-agency reporting, and Freedom of Information Act responsibilities. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(e) The Office of Secretary and Administration is responsible for the Commission's facilities and infrastructure. In this role, the Office of Secretary and Administration manages facility security; provides information technology and other support services essential to the efficient and effective conduct of operations; acquires and assigns office space; and manages procurement and supply.

§ 3002.12 Office of Accountability and Compliance.

(a) The Office of Accountability and Compliance is responsible for technical analysis and the formulation of policy recommendations for the Commission in both domestic and international matters, including those governed by the Universal Postal Union.

(b) The Office of Accountability and Compliance provides the analytic support to the Commission for the review of rate changes, negotiated service agreements, classification of products, the Annual Compliance Determination, the Annual Report, changes to postal services, post office closings and other issues which come before the Commission." The functional areas of expertise within this office are:

(1) The economic analysis of the market for postal services including the alternative sources for such services and the users of the service;

(2) The analysis of the operational characteristics of the postal system and its interface with various segments of the economy; and

(3) The analysis of the costs of operating the Postal Service and how such costs are influenced by operational characteristics, changes in volume, and changes in other relevant factors.

(c) These functional activities are combined in the evaluation of the Postal Service's proposed rates, proposed service changes, proposed changes to the Mail Classification Schedule, and product list designations, as well as formal complaints, the Annual Compliance Determination, and all other proceedings, reports, and filings before the Commission requiring such analysis.

(d) The Office of Accountability and Compliance also collects, analyzes, and periodically summarizes financial and various other statistical information for use in its ongoing activities and for the development of future methods, techniques, and systems of analysis and reporting.

§ 3002.13 Office of the General Counsel.

(a) The General Counsel directs and coordinates the functions of the Office of the General Counsel. The General Counsel does not appear as an attorney in any proceeding before the Commission and takes no part in the preparation of evidence or argument presented in such hearings.

(b) The Office of the General Counsel provides legal assistance on matters involving the Commission's responsibilities; defends Commission decisions before the courts; and advises the Commission on the legal aspects of proposed legislation, rulemaking, and policies on procurement, contracting, personnel matters, ethics, and other internal legal matters.

§ 3002.14 The Public Representative.

(a) Pursuant to 39 U.S.C. 505, the Commission appoints a staff member, on a case-by-case basis, to serve as a representative of the general public's interests in public proceedings before the Commission. This appointee is called the Public Representative.

(b) Individuals appointed to represent the general public are subject to the same ex parte prohibitions as apply to all other interested persons in the cases to which they are assigned to the role of the Public Representative.

§ 3002.15 Office of Public Affairs and Government Relations.

(a) The Office of Public Affairs and Government Relations facilitates prompt and responsive communications for the Commission with the public, members of Congress, the Postal Service, state and local governments, and the media.

(b) The Office of Public Affairs and Government Relations has three primary areas of responsibility: Government Relations, Consumer Affairs, and Communications.

(1) *Government Relations.* The Office of Public Affairs and Government Relations is the principal liaison between the Commission and Members of Congress. It develops and maintains effective working relationships with Congressional staff; monitors legislative activity; and advises the Commission and its staff on legislative actions and policies related to the Commission and its mission. The Office of Public Affairs and Government Relations works in conjunction with all Commission offices to ensure that lawmakers are informed of regulatory decisions and policies and that the Commission is responsive to Congressional inquiries for technical information. The Office of Public Affairs and Government Relations also prepares Commissioners and Commission staff when called upon to provide Congressional testimony.

(2) *Consumer Affairs.* As the principal source of outreach and education to the public, the Office of Public Affairs and Government Relations provides information to postal consumers and assists in the resolution of rate and service inquiries from members of the public pursuant to part 3031 of this chapter. It supports the impartial resolution of those inquiries through use of the Postal Service's Office of Consumer Advocate and reports the results to the Commission. The Office of Public Affairs and Government Relations also utilizes procedures available under the Commission's rules and applicable law to assist relevant stakeholders in appeals of Postal Service decisions to close or consolidate individual post offices; maintains a record of service-related inquiries; and posts calendar updates and other public information on the Commission's Web site.

(3) *Communication.* The Office of Public Affairs and Government Relations also develops public outreach strategies for the Commission, responds to media inquiries, and disseminates information concerning Commission decisions and activities to the public.

§ 3002.16 Office of Inspector General.

(a) The Office of Inspector General has the duty and responsibility to:

(1) Provide policy direction and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Commission;

(2) Review existing and proposed legislation and regulations relating to programs and operations of the Commission;

(3) Make recommendations in semiannual reports concerning the impact of such legislation or regulations on the economy and efficiency of programs and operations administered or financed by the Commission or on the prevention and detection of fraud and abuse in the Commission's programs and operations;

(4) Recommend policies and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of preventing and detecting fraud and abuse in its programs and operations;

(5) Recommend policies and coordinate communications between the Commission and other federal agencies,

state and local government agencies, and nongovernment entities for:

(i) All matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; or

(ii) The identification and prosecution of participants in such fraud and abuse;

(6) Keep the Commission and Congress fully and currently informed through reports concerning fraud and other serious problems, abuses, and deficiencies relating to programs and operations administered or financed by the Commission; recommend corrective action concerning such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective action.

(b) [Reserved]

[FR Doc. 2013–10696 Filed 5–8–13; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2013–0100 FRL–9384–8]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 15 chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons who intend to manufacture, import, or process any of these 15 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on July 8, 2013. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 23, 2013.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before June 10, 2013 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0100, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2013–0100. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2013–0100. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after June 10, 2013 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 15 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 15 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).

- Basis for the SNUR.
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

This rule includes a PMN substance whose reported chemical name includes the term "carbon nanotube" or "CNT". Because of a lack of established nomenclature for carbon nanotubes, the TSCA Inventory names for carbon nanotubes are currently in generic form, *e.g.*, carbon nanotube (CNT), multi-walled carbon nanotube (MWCNT), double-walled carbon nanotube (DWCNT), or single-walled carbon nanotube (SWCNT). EPA uses the specific structural characteristics provided by the PMN submitter to more specifically characterize the Inventory listing for an individual CNT. All submitters of new chemical notices for CNTs have claimed those specific structural characteristics as CBI. EPA is publishing the generic chemical name along with the PMN number to identify that a distinct chemical substance was the subject of the PMN without revealing the confidential chemical identity of the PMN substance. Confidentiality claims preclude a more detailed description of the identity of these CNTs. If an intended manufacturer, importer, or processor of CNTs is unsure of whether its CNTs are subject to this SNUR or any other SNUR, the company can either contact EPA or obtain a written determination from EPA pursuant to the *bona fide* procedures at § 721.11. EPA is using the specific structural characteristics, for all CNTs submitted as new chemical substances under TSCA, to help develop standard nomenclature for placing these chemical substances on the TSCA Inventory. EPA has compiled a generic list of those structural characteristics entitled "Material Characterization of Carbon Nanotubes for Molecular Identity (MI) Determination & Nomenclature." A copy of this list is available in the docket for these SNURs under docket ID number EPA–HQ–OPPT–2013–0100. If EPA develops a more specific generic chemical name for these materials, that name will be made publicly available.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.*, limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

None of the 15 PMN substances included in this rule are subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." These so-called "non-5(e) SNURs" are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a "significant new use" in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.*, these significant new use activities, "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

PMN Number P–11–60

Chemical name: Methylenebis[isocyanatobenzene], polymer with alkanedoic acid, alkylene glycols, alkoxylated alkanepolyol and substituted trialkoxysilane (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an adhesive system component. Based on structural activity relationship (SAR) analysis of test data on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization and for pulmonary toxicity to workers exposed to free isocyanates. Also, based on ecological structural activity relationship (EcoSAR) analysis on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 61 parts per billion (ppb) of the PMN substance in surface waters. As described in the PMN, significant worker exposure or releases of the PMN substance to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN (manufacture with all isocyanate groups reacted within the polymer), or any use of the substance resulting in surface water concentrations exceeding 61 ppb could result in exposures which may cause serious health effects or significant adverse environmental effects.

Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility: Column elution method; shake flask method test (OPPTS 830.7840), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), a fish acute toxicity test, freshwater and marine test (OPPTS Test Guideline 850.1075), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10661.

PMN Number P–11–204

Chemical name: Acetaldehyde, substituted-, reaction products with 2-butyne-1, 4-diol (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance is as a brightener for nickel electroplating. Based on EcoSAR analysis of test data on analogous halo alcohols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 7 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and an algal toxicity test (OCSPP Test Guideline 850.4500), would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10662.

PMN Number P–12–44

Chemical name: Functionalized multi-walled carbon nanotubes (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an additive for rubber and batteries. Based on available information on analogous chemical substances, EPA identified concerns for lung effects to workers exposed to the PMN substance. As described in the PMN, no significant inhalation exposures are expected to workers due to the manufacturing, processing, and use processes described in the PMN and the use of adequate personal protective equipment. EPA expects that some fraction of the carbon nanotubes, if released into the environment, will eventually become suspended in water. Sublethal effects have been observed for carbon nanotubes in fish at levels as low as 100 ppb. Observed effects included respiratory stress, ventilation rate, gill mucus secretion, gill damage, and aggressive behavior. As described in the PMN, no environmental exposures are expected, because the PMN substance is not released to surface water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN; manufacturing, processing, or use in a powder form; or any use of the substance resulting in surface water releases may cause serious health effects or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of the following tests would help characterize the health and environmental effects of the PMN substance: (1) A 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with a post-exposure observation period of up to 3 months, bronchoalveolar lavage fluid (BALF) analysis, particle size distribution information and other toxicologically relevant properties, data on histopathology of pulmonary and ex-pulmonary organs/tissues (cardiovascular, central nervous system, liver, kidney, etc.), pulmonary deposition (lung burden), clearance half-life (biopersistence) and translocation of the test material, and a determination of cardiovascular toxicity; (2) analysis by Scanning Transmission Electron Microscopy (STEM), Transmission Electron Microscopy (TEM), or Scanning Electron Microscopy (SEM) of number of walls (range and average), tube ends (open, capped, circular, other), tube width/diameter (measure inner and outer diameters or range), tube length (range) including a description of any deformities found in the tubes (bumps, branching, gaps, etc.); (3) percent (range) of functional groups found on the tubes (include the method of determination); and (4) particle size determined by count not by weight or volume (preferably using STEM).

CFR citation: 40 CFR 721.10663.

PMN Numbers P–12–408, P–12–409, P–12–410, P–12–411, P–12–412, and P–12–413

Chemical name: Alkenedioic acid dialkyl ester, reaction products with alkenoic acid alkyl esters and diamine (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of these substances are as binders. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb for the aggregate of the PMN substances in surface waters. As described in the PMNs, releases to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 1 ppb for the aggregate of the PMN substances may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010), fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. The tests should be conducted on either the P–12–411 or P–12–413 substance.

CFR citation: 40 CFR 721.10664.

PMN Number P–12–414

Chemical name: 2-Propenoic acid, (2-ethyl-2-methyl-1,3-dioxolan-4-yl)methyl ester.

CAS number: 69701–99–1.

Basis for action: The PMN states that the use of the substance is as a reactive intermediate for use in ultraviolet (UV), electron beam (EB) and conventionally cured coating and ink formulations. Based on test data submitted on the PMN substance and EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 26 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 26 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN or any increase of the annual production volume of 50,000 kilograms could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early life-stage toxicity test (OPPTS Test Guidelines 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10665.

PMN Number P–12–437

Chemical name: Quaternary ammonium compounds, bis(fattyalkyl) dimethyl, salts with tannins (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a component in drilling fluid. Based on EcoSAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 11 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance to surface waters are not expected.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of

the substance other than as described in the PMN or resulting in surface water concentrations exceeding 11 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an activated sludge sorption isotherm test (OPPTS Test Guideline 835.1110), a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), a fish acute toxicity test mitigated by humic acid (OPPTS Test Guidelines 850.1085), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the fate and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10666.

PMN Number P–12–560

Chemical name: Slimes and sludges, aluminum and iron casting, wastewater treatment, solid waste.

CAS number: 1391739–82–4.

Chemical substance definition: The waste solids produced from the treatment of wastewaters during aluminum and iron casting, machining and finishing operations. It may contain aluminum, barium, chromium, copper, iron, lead, manganese, nickel, and zinc.

Basis for action: The PMN states that the use of the substance is as a feedstock to provide mineral content for cement manufacturing. Based on test data on analogous respirable, poorly soluble particulates, EPA identified concerns for lung effects from lung overload associated with inhalation of the PMN substance when in powder form. EPA also identified concerns for neurotoxicity, immunotoxicity, and blood effects from any lead that is bioavailable; respiratory sensitization and immunotoxicity from any nickel, lead, aluminum, copper, and iron that is bioavailable; and digestive system effects from any copper that reaches the gastrointestinal tract. These concerns are for effects to workers from inhalation exposure to the PMN substance. For the uses described in the PMN, significant inhalation worker exposure is not expected as the PMN substance is not manufactured, processed, or used in powder form. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that the manufacture, processing, or use of the substance in powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with 60-day holding period would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10667.

PMN Number P–13–18

Chemical name: Trisodium diethylene triaminepolycarboxylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a stabilizing agent for polymers. Based on the PMN substance's chelating potential of calcium, magnesium, iron, and other divalent cations and test data on analogous chemical substances such as pentacarboxylic acid chelators (TSCA section 8(e) submission # 10980, CAS No. 140–01–2), ethylenediamine tetramethylene phosphonic acid, ethylene diamine tetramethylene phosphonic acid (EDTMPA), ethylenediaminetetraacetic acid (EDTA), and nitrilotriacetic acid (NTA), EPA identified concerns for blood toxicity, effects on the heart, inhibited muscle functioning, bone toxicity, bone cancer, developmental toxicity, and kidney toxicity. These concerns are for effects to workers from inhalation exposure to the PMN. EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(c), (b)(3)(i), and (b)(3)(ii).

Recommended testing: EPA has determined that a 90-day oral toxicity in rodents test (OPPTS Test Guideline 870.3100) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10668.

PMN Number P–13–78

Chemical name: Tertiary amine alkyl ether (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a catalyst for producing polyurethane foam. Based on test data on analogous chemical substances, EPA identified concerns for acute toxicity, irritation/corrosion to all exposed tissues, kidney toxicity, liver toxicity, effects to the adrenal system, and male reproductive toxicity to workers and the general population exposed to the PMN substance. For the use described in the PMN, significant worker and general population exposure is not expected.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than for the use described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/development toxicity screening test (OPPTS Test Guideline 870.3650) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10669.

PMN Number P–13–108

Chemical name: Bromine, manufactore of, by-products from, distillation residues.

CAS number: Not available.

Chemical substance definition: The complex residuum obtained during the production of bromine using brine and waste streams from the production of halogenated hydrocarbons. It consists predominantly of halogenated hydrocarbons and ketones, having carbon numbers predominantly in the range of C3–C17. The boiling point is approximately 98°C to 350°C (208 °F to 662 °F).

Basis for action: The PMN states that the use of the substance is as feed for bromine recovery. EPA identified health and environmental concerns because the substance may be a persistent, bioaccumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the substance will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on test data on analogous bromobenzene and derivatives and brominated organic compounds, EPA identified concerns for liver toxicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity, oncogenicity, and endocrine disruption. Further, based on EcoSAR analysis of test data on analogous neutral organic substances, EPA predicts toxicity to

aquatic organisms may occur at concentrations that exceed 1 ppb of the substance in surface waters. As described in the PMN, significant worker exposures are not expected and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water releases may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the following tests would help characterize the health and environmental effects of the PMN substance:

(1) Modified semi-continuous activated sludge (SCAS) with analysis for degradation products (OPPTS Test Guideline 835.5045, or Organisation for Economic Co-operation and Development (OECD) Test Guideline 302A); (2) direct photolysis (OPPTS Test Guideline 835.2210), if wavelengths greater than 290 nano meters (nm) are absorbed, determined using OPPTS Test Guideline 830.7050; (3) indirect photolysis (OPPTS Test Guideline 835.5270); (4) hydrolysis as a function of pH and temperature (OPPTS Test Guideline 835.2130 or OECD Test Guideline 111); (5) aerobic and anaerobic transformation in soil (OECD Test Guideline 307); (6) phototransformation on soil surfaces (Draft OECD Jan. 2002); (7) aerobic and anaerobic transformation in aquatic sediment systems (OECD Test Guideline 308); (8) fish BCF (OECD Test Guideline 305) or earthworm bioaccumulation (OECD Test Guideline 317); (9) combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OECD Test Guideline 422); (10) fish early life-stage toxicity test (OPPTS Test Guideline 850.1400); (11) daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and (12) algal toxicity test (OCSPP Test Guideline 850.4500). EPA also recommends that the special considerations for conducting aquatic laboratory studies (OPPTS Test Guideline 850.1000) be followed.

CFR citation: 40 CFR 721.10670.

V. Rationale and Objectives of the Rule

A. Rationale

In these 15 cases, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html*.

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is July 8, 2013 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before June 10, 2013.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before June 10, 2013, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. The identities of 13 of the 15 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per § 720.25 and § 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore EPA designates May 9, 2013 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture, import, or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance

subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists recommended testing for these non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." The OECD test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

When physical/chemical properties of test material and/or material characterization tests are recommended for nanoscale substances that are the subject of this rule, you should take into consideration the characterizations identified in the Guidance Manual for the Testing of Manufactured Nanomaterials: OECD's Sponsorship Programme, which is available at *http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=env/jm/mono(2009)20/rev&doclanguage=en.*

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2013–0100.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As

a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 2, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control no.
. . . . .	
Significant New Uses of Chemical Substances	
. . . . .	
721.10661	2070–0012.
721.10662	2070–0012.
721.10663	2070–0012.
721.10664	2070–0012.
721.10665	2070–0012.
721.10666	2070–0012.
721.10667	2070–0012.
721.10668	2070–0012.
721.10669	2070–0012.
721.10670	2070–0012.
. . . . .	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10661 to subpart E to read as follows:

§ 721.10661 Methylenebis[isocyanatobenzene], polymer with alkanedoic acid, alkylene glycols, alkoxylated alkanepolyol and substituted trialkoxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylenebis[isocyanatobenzene], polymer with alkanedoic acid, alkylene glycols, alkoxylated alkanepolyol and substituted trialkoxysilane (PMN P–11–60) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture with all isocyanate groups reacted within the polymer).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 61).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10662 to subpart E to read as follows:

§ 721.10662 Acetaldehyde, substituted-, reaction products with 2-butyne-1, 4-diol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acetaldehyde, substituted-, reaction products with 2-butyne-1, 4-diol (PMN P–11–204) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (brightener for nickel electroplating).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10663 to subpart E to read as follows:

§ 721.10663 Functionalized multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as functionalized multi-walled carbon nanotubes (PMN P–12–44) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j), (v)(1), (w)(1), and (x)(1).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 7. Add § 721.10664 to subpart E to read as follows:

§ 721.10664 Alkenedioic acid dialkyl ester, reaction products with alkenoic acid alkyl esters and diamine (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkenedioic acid dialkyl ester, reaction products with alkenoic acid alkyl esters and diamine (PMNs P–12–408, P–12–409, P–12–410, P–12–411, P–12–412, and P–12–413) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 1 parts per billion (ppb) for the aggregate of the PMN substances, P–12–408, P–12–409, P–12–410, P–12–411, P–12–412, and P–12–413).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10665 to subpart E to read as follows:

§ 721.10665 2-Propenoic acid, (2-ethyl-2-methyl-1,3-dioxolan-4-yl)methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, (2-ethyl-2-methyl-1,3-dioxolan-4-yl)methyl ester (PMN P–12–414; CAS No. 69701–99–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (reactive intermediate for use in ultraviolet (UV), electron beam (EB), and conventionally cured coating and ink formulations) and (s) (50,000 kilograms).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10666 to subpart E to read as follows:

§ 721.10666 Quaternary ammonium compounds, bis(fattyalkyl) dimethyl, salts with tannins (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as quaternary ammonium compounds, bis(fattyalkyl) dimethyl, salts with tannins (PMN P–12–437) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 11).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. Add § 721.10667 to subpart E to read as follows:

§ 721.10667 Slimes and sludges, aluminum and iron casting, wastewater treatment, solid waste.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as slimes and sludges, aluminum and iron casting, wastewater treatment, solid waste (PMN P–12–560; CAS No. 1391739–82–4; chemical substance definition: The waste solids produced from the treatment of wastewaters during aluminum and iron casting, machining and finishing operations. It may contain aluminum, barium, chromium, copper, iron, lead, manganese, nickel, and zinc.) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10668 to subpart E to read as follows:

§ 721.10668 Trisodium diethylene triaminepolycarboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trisodium diethylene triaminepolycarboxylate (PMN P–13–18) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 12. Add § 721.10669 to subpart E to read as follows:

§ 721.10669 Tertiary amine alkyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tertiary amine alkyl ether (PMN P–13–78) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a catalyst for producing polyurethane foam).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10670 to subpart E to read as follows:

§ 721.10670 Bromine, manufacture of, by-products from, distillation residues.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bromine, manufacture of, by-products from, distillation residues (PMN P–13–108; chemical substance definition: The complex residuum obtained during the production of bromine using brine and waste streams from the production of halogenated hydrocarbons. It consists predominantly of halogenated hydrocarbons and ketones, having carbon numbers predominantly in the range of C3–C17. The boiling point is approximately 98 °C to 350 °C (208 °F to 662 °F).) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2013–11061 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0206; FRL—9809–4]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Parish of Pointe Coupee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting direct final approval of a revision to the Louisiana State Implementation Plan (SIP) concerning a maintenance plan addressing the 1997 8-hour ozone standard for the parish of Pointe Coupee. On February 28, 2007, the State of Louisiana submitted a SIP revision containing a maintenance plan for the 1997 ozone standard for Pointe Coupee Parish. This plan ensures the continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for this area under the 2008 standard will be addressed in future actions. This maintenance plan meets statutory and regulatory requirements, and is consistent with EPA's guidance.

DATES: This rule is effective on July 8, 2013 without further notice, unless EPA receives relevant adverse comment by June 10, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0206, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:00 a.m. and 4:00 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0206. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana 70821.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk or Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164 or (214) 665–7367; fax number 214–665–7263; email address *belk.ellen@epa.gov* or *rennie.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we" "us" or "our" is used, we mean the EPA.

Outline

I. Background

Under section 107 of the 1977 CAA, Louisiana's Pointe Coupee Parish was designated as a nonattainment area because it did not meet the National Ambient Air Quality Standards (NAAQS) for 1-hour ozone (40 CFR 81.319). Under the 1990 CAA Amendments, Pointe Coupee Parish was included as part of the Baton Rouge nonattainment area, and continued to be

designated nonattainment for the 1-hour ozone NAAQS by operation of law. Under these Amendments, the Baton Rouge area, which included Pointe Coupee, was classified as a serious 1-hour ozone nonattainment area, pursuant to sections 107(d) and 181(a) of the CAA Amendments (56 FR 56694).

On December 20, 1995, Louisiana submitted a State Implementation Plan (SIP) requesting that Pointe Coupee Parish be removed from the Baton Rouge nonattainment area and be redesignated to attainment for the 1-hour standard. As part of the submittal, the State provided the required ozone monitoring data and a maintenance plan for the Parish to ensure the area would remain in attainment for 1-hour ozone for a period of 10 years. EPA approved Louisiana's request to redesignate Pointe Coupee Parish to attainment for the 1-hour ozone standard and the maintenance plan on January 6, 1997 (62 FR 648).

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase 1 rule for implementation of the 1997 ozone NAAQS (69 FR 23951). Pointe Coupee Parish was designated as unclassifiable/attainment for the 1997 ozone standard, effective June 15, 2004. The area is consequently required to submit a 10-year maintenance plan under section 110(a) (1) of the CAA and the Phase 1 rule. On May 20, 2005, EPA issued guidance providing information regarding how a state might fulfill the maintenance plan obligation established by the Act and the Phase 1 rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005). This SIP revision satisfies the section 110(a) (1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the Pointe Coupee Parish 1997 8-hour ozone unclassifiable/attainment area.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Implementation Rule for the 1997 8-Hour Ozone Standard. (*South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Petitions for rehearing were filed with the Court, and on June 8, 2007, the Court modified the scope of the vacatur of the Phase 1 rule. See 489 F.3d 1245 (DC Cir. 2007), *cert. denied,* 128 S.Ct. 1065 (2008). The Court vacated those portions of the Rule that provide for regulation of the 1997 8-hour ozone NAAQS nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allow backsliding with respect to new source review, penalties, milestones, contingency plans, and motor vehicle emission budgets. Consequently, the Court's modified ruling does not alter any requirements under the Phase 1 implementation rule for the 1997 8-hour ozone NAAQS for maintenance plans.

II. Analysis of the State's Submittal

On February 28, 2007, the State of Louisiana submitted a SIP revision containing a maintenance plan for the 1997 ozone NAAQS for Pointe Coupee Parish. This February revision provides a 1997 ozone NAAQS maintenance plan for the parish, as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Implementation Rule (*see* 40 CFR 51.905(a)(4)). The purpose of this plan is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in Pointe Coupee Parish.

In this action, EPA is approving the State's maintenance plan for the 1997 ozone NAAQS for Pointe Coupee Parish because EPA finds that the LDEQ submittal meets the requirements of section 110(a)(1) of the CAA, EPA's rule, and is consistent with EPA's guidance. As required, this plan provides for continued attainment and maintenance of the 1997 ozone NAAQS in the area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 1997 8-hour ozone NAAQS, and includes components illustrating how the Parish will continue in attainment of the 1997 8-hour ozone NAAQS and contingency measures. Each of the section 110(a) (1) plan components is discussed below.

(a) Attainment Inventory. The LDEQ developed comprehensive inventories of VOC and NO_X emissions from area, stationary, and mobile sources using 2002 as the base year to demonstrate maintenance of the 1997 ozone NAAQS for Pointe Coupee Parish. The year 2002 is an appropriate year for the LDEQ to base attainment level emissions because States may select any one of the three years on which the 8-hour attainment designation for the 1997 ozone NAAQS was based (2001, 2002, and 2003). The State's submittal contains detailed inventory data and summaries by source category. The 2002 base year inventory is a good choice. Using the 2002 inventory as a base year reflects one of the years used for calculating the air quality design values on which the 8-hour ozone designation decisions were based. It also is one of the years in the 2002–2004 period used to establish baseline visibility levels for the regional haze program.

A practical reason for selecting 2002 as the base year emission inventory is that Section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require States to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the rule as June 2004. In accordance with these requirements, the State of Louisiana compiles a statewide EI for point sources on an annual basis. For stationary point sources, for Pointe Coupee Parish, the LDEQ provided estimates for each commercial or industrial operation that emits 100 tons or more per year of VOC or NO_X in Appendix A of the maintenance plan. Stationary non-point source data was provided by E.H. Pechan & Associates, Inc., through the Central Regional Air Planning Association (CENRAP) using the methodology in "Consolidation of Emissions Inventories", section C, page 26. On-road mobile emissions of VOC and NO_X were estimated using EPA's MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived from the "Emission Inventory Development For Mobile Sources and Agricultural Dust Sources for the Central States" produced by Sonoma Technology, Inc. for CENRAP in October 2004 using EPA's NONROAD 2004 non-road mobile emissions computer model. EPA finds that the LDEQ prepared the 2002 base year emissions inventories for the Parish consistent with EPA's long-established guidance memoranda.

In projecting data for the attainment year 2014 inventory, LDEQ used several methods to project data from the base year 2002 to the years 2008, 2011, and 2014. These projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following tables provide VOC and NO_X emissions data for the 2002 base attainment year inventory, as well as projected VOC and NO_X emission inventory data for the years 2008, 2011, and 2014. Please see the Technical Support Document (TSD) for additional emissions inventory data including

projections by source category for the parish.

POINTE COUPEE PARISH VOC AND NO_X EMISSIONS INVENTORY BASELINE (2002) AND PROJECTIONS (2008, 2011, AND 2014)

Emissions	2002 tons per day	2008 tons per day	2011 tons per day	2014 tons per day
Total VOC	8.63	8.04	7.75	7.66
Total NO_X	65.72	67.81	70.44	73.27

As shown in the Table, total VOC emissions are projected to decrease slightly, and total NO_X emissions for Pointe Coupee Parish are projected to increase slightly over the 10-year period of the maintenance plan. While emission projections for VOC indicate a downward trend through 2014, NO_X emission projections through 2014 show an increase of 7.55 tons per day, or approximately 11% (from 65.72 to 73.27 tpd). This projected increase is relatively small considering that it occurs over a period of approximately twelve years from the 2002 baseline. The slightly upward trend in NO_X emissions results primarily from projected increases in emissions for the point source category, although there is also projected to be a very small increase from the nonpoint source category. Emissions of NO_X from non-road sources are projected to remain nearly the same, and emissions of NO_X from on-road mobile sources are projected to decrease. The EGAS system for projecting emissions may overstate future emissions because the system relies principally on economic growth for the projections. Specifically, the future emissions from NO_X point sources can be overstated because the projections do not include reductions from regulatory or permit controls. A review of emissions inventory trends, now available through 2008, confirms that the emission projections in the SIP were overstated. In fact rather than an 11% increase in NO_X, emissions have declined by almost 40% since 2002.

Please see the TSD for more information on EPA's analysis and review of the State's methodologies, modeling data and performance, etc. for developing the base and attainment year inventories for the area. As shown in the table and discussion above, the State projected that the future year ozone precursor emissions will be less than or similar to the 2002 base attainment year's emissions. The attainment inventory submitted by the LDEQ for this area is consistent with the criteria as discussed in the EPA Maintenance Plan Guidance memo dated May 20, 2005, and in other guidance documents (please see the docket for additional information). Considering emissions projections together with reductions from measures not accounted for in the state's projections, EPA finds that the future emissions levels in 2008, 2011 and 2014 are expected to be less than or similar to emissions levels in 2002.

Ambient air monitoring data entered into the National Emission Inventory database for 2005 and 2008 supports the above finding.

(b) Maintenance Demonstration. The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 1997 ozone standard for the 10 year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the attainment designation for the 1997 ozone NAAQS, which for Pointe Coupee Parish was June 15, 2004. Therefore, this plan must demonstrate how the area will remain in attainment through 2014. As discussed in section (a) Attainment Inventory above, Louisiana has identified the level of ozone-forming emissions in Pointe Coupee Parish that was consistent with attainment of the NAAQS for ozone in 2002. Louisiana projected VOC and NO_X emissions for the years 2008, 2011, and 2014 in Pointe Coupee Parish and finds that the future emissions levels in those years are projected to be similar to or below the emissions levels in 2002. Please see the TSD for more information on EPA's review and evaluation of the State's 2008, 2011, and 2014 projected emissions inventories.

Louisiana relies on several air quality measures that will provide for additional 8-hour ozone emissions reductions in Point Coupee Parish. These measures include the following, among others:

(1) implementation of EPA's National Rules for VOC Emission Standards: for Automobile Refinish Coatings (63 FR 48806), for Consumer Products (63 FR 48819), and Architectural Coatings (63 FR 48848), for Consumer and Commercial Products Group II (Flexible Packaging Printing Materials, Lithographic Printing Materials, Letterpress Printing Materials) (71 FR 58745), for Consumer and Commercial Products Group III (Paper, Film, and Foil Coatings, Metal Furniture Coatings, and Large Appliance Coatings) (72 FR 57215), and for Consumer and Commercial Products Group IV (Miscellaneous Metal Products Coatings, Plastic Parts Coatings, Auto and Light-Duty Truck Assembly Coatings, Fiberglass Boat and Manufacturing Materials, and Miscellaneous Industrial Adhesives) (73 FR 58481);

(2) enacting of specific requirements from EPA's Tier 2 Motor Vehicle Emission Standards (65 FR 6697), EPA's Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5001), as well as EPA's Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control requirements (65 FR 6697);

(3) EPA's required control of emissions from Non-road Diesel Engines and Fuels (69 FR 38958); and

(4) EPA's Locomotive and Marine Compression-Ignition Engines rule (73 FR 16435). The purpose of these control measures is to reduce levels of 8-hour ozone precursors, including the area of Pointe Coupee Parish, as well as to reduce transport to the Pointe Coupee Parish area from other areas such as Baton Rouge.

(c) Ambient Air Quality Monitoring. The State of Louisiana committed in its maintenance plan to provide operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR part 58 with regard to the continued adequacy of such a network.

The Point Coupee Parish monitoring site monitored attainment with the 1997 ozone standard from 2002 through 2006. The 1997 ozone NAAQS is 0.08 parts per million based on the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The 1997 ozone standard is considered to be attained at 84 parts per billion (ppb). In 2007 when the maintenance plan was submitted by

LDEQ, the three most recent 8-hour ozone design values based on certified data for the Pointe Coupee Parish site were 2003–2005. Table 1 shows the design values before and after 2005.

TABLE 1—POINTE COUPEE PARISH DESIGN VALUES IN PARTS PER BILLION (PPB)

Year	Design value
2003	73
2004	76
2005	81
2006	84
2007	86
2008	83
2009	77
2010	75
2011	75
2012 (preliminary)	77

A violation of the 1997 8-hour ozone standard in 2007 prevented us from approving this plan earlier. However, certified monitoring data now clearly show that the Parish came back into attainment in 2008 and continues to be in attainment of that standard. Further analysis of the monitoring data revealed that a 4th high exceedance in 2006 was the primary cause for the violation in 2007. Speciated PAMS monitoring data from the adjacent Baton Rouge area showed a spike in stationary source NO_X in 2006 which is the likely cause of the exceedance in Pointe Coupee during 2006. Transport of emissions from the Baton Rouge area into Pointe Coupee Parish has been demonstrated in a number of studies.

In August and September 2005, the Baton Rouge metropolitan area (which includes Pointe Coupee) absorbed an estimated 75,000 evacuees from Hurricane Katrina. Upwards of 15,000 of those remained in Baton Rouge through 2006. Increased demands on power generating facilities, and Baton Rouge area refineries compensating for other area refining facilities that were shut down or operating at reduced capacity are likely sources of the stationary source NO_X increase. For these reasons, we are considering the 2007 violation an anomaly and proposing approval of this maintenance plan. See the TSD for this action for a more comprehensive discussion of this anomalous violation.

(d) Contingency Plan. The section 110(a)(1) maintenance plans include contingency provisions to correct promptly any violation of the 1997 ozone NAAQS that occurs. The contingency indicator for the Pointe Coupee Parish maintenance plan is based upon monitoring data. The triggering mechanism for activation of contingency measures is a violation of the 1997 ozone standard.[1] In this maintenance plan, if contingency measures are triggered, LDEQ is committing to implement the appropriate measures as expeditiously as practicable, but no later than 24 months following the trigger.

The following contingency measures are identified for implementation: (1) Lowering VOC RACT applicability thresholds for Stage 1 gasoline controls, (2) NO_X controls on major sources (100 tpy and greater), (3) Emission offsets for permits (1.10 ratio for VOC and NO_X), and (4) Other measures deemed appropriate at the time as a result of advances in control technologies. These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 ozone NAAQS in the area of Pointe Coupee Parish will depend, in part, on the air quality measures discussed previously (see II. (b) above). In addition, Louisiana commits to verify the 8-hour ozone status of the areas air quality through appropriate ambient air quality monitoring, and to quality assure air quality monitoring data according to federal requirements.

III. Final Action

Pursuant to section 110 of the Act, EPA grants direct final approval of the 1997 8-hour ozone maintenance plan for Pointe Coupee Parish, which was submitted by LDEQ on February 28, 2007, which ensures continued attainment of the 1997 8-hour ozone NAAQS through the year 2014. We evaluated the State's submittal and determine that it meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy.

EPA is publishing this Rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on July 8, 2013 without further notice unless we receive adverse comment by June 10, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

[1] A violation is deemed to have occurred upon the date of EPA's certification of the monitoring data. EPA certified the 2007 data in July 2008. The State's contingency measures plan provides that if there is a violation, then the appropriate control measures to bring Pointe Coupee back into attainment must be implemented no later than 24 months, i.e., July 2010. In order to understand the source of the 2007 ozone violation in the Parish, EPA reviewed the conditions and found that the higher ozone days in Pointe Coupee Parish are due to ozone concentrations or pre-cursors coming primarily from outside of the Parish. Of the twelve days in which there was an exceedance in 2005–2007, eleven show significant influence coming from outside the parish. For ten of the days, the trajectories show influence from the industrial area of Baton Rouge (southeast of Pointe Coupee), and for one of the days the trajectory goes through West and East Feliciana (northeast of Pointe Coupee) The twelfth exceedance was not high enough to be included in the design value calculation. In the docket, see the map entitled, "Analysis of High Ozone Concentrations in Pointe Coupee Parish, LA." Pointe Coupee's 2008 monitoring data had no exceedances, and the design value for 2008 is below the 1997 8-hour ozone standard. EPA certified the 2008 data in January 2009.

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. In § 52.970, the second table in paragraph (e) entitled, "EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES", is amended by adding one new entry to the end of the table to read as follows:

§ 52.970 Identification of plan.

* * * * *

(e) * * *

* * * * *

EPA-APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA Approval date	Explanation
1997 8-Hour Ozone Section 110 Maintenance Plan.	Pointe Coupee-Parish, LA	2/28/2007	5/9/2013 ..... [Insert FR page number where document begins].	

■ 3. Section 52.975 is amended by adding paragraph (l) to read as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(l) *Approval.* The Louisiana Department of Environmental Quality (LDEQ) submitted a 1997 8-hour ozone NAAQS maintenance plan for the area of Pointe Coupee Parish on February 28, 2007. The area is designated unclassifiable/attainment for the 1997 8-hour ozone standard. EPA determined this request for Pointe Coupee Parish was complete on May 2, 2007. The maintenance plan meets the requirements of section 110(a)(1) of the Clean Air Act, and is consistent with EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 1997 8-hour ozone NAAQS maintenance plan for the area of Pointe Coupee Parish on May 9, 2013.

[FR Doc. 2013–10832 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0113; FRL–9810–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a narrow portion of a State Implementation Plan (SIP) revision submitted by the State of West Virginia on August 31, 2011. EPA is taking this final action because the

submittal does not satisfy the Federal requirement for inclusion of condensable emissions of particulate matter (condensables) within the definition of "regulated new source review (NSR) pollutant" for fine particulate matter ($PM_{2.5}$) and particulate matter emissions less than or equal to ten micrometers in diameter (PM_{10}). In addition, because West Virginia's August 31, 2011 SIP revision does not adequately account for condensable emissions within the definition of "regulated NSR pollutant," EPA is also disapproving specific Prevention of Significant Deterioration (PSD) portions of related infrastructure SIP submissions required by the Clean Air Act (CAA) to implement, maintain, and enforce the 1997 fine particulate matter ($PM_{2.5}$) and ozone National Ambient Air Quality Standards (NAAQS), the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead and ozone NAAQS. This action is being taken under the CAA.

DATES: This final rule is effective on June 10, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0113. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

EPA granted full approval of West Virginia's August 2011 SIP submission and the PSD portions of related infrastructure submissions required by the CAA on October 17, 2012 (77 FR 63736) but took no action on the narrow issue of the requirement to include condensable emissions in the definition of "regulated NSR pollutant" in the State's PSD program for $PM_{2.5}$ and PM_{10}. EPA has subsequently determined that the omission of condensables from this definition in the state's regulation at 45CSR14 is cause for disapproval of that narrow portion of the SIP submittal and the related infrastructure submissions.

As a result of this omission, on March 15, 2013 (78 FR 16449), EPA proposed disapproval of a narrow portion of the August 2011 SIP revision, as well as specific PSD portions of related infrastructure submissions required by the CAA to implement, maintain, and enforce the 1997 $PM_{2.5}$ and ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead and ozone NAAQS. A full discussion on the background of this action and other related actions are available in the NPR. No comments were received during the public comment period.

II. Summary of SIP Revision

This action disapproves the remaining narrow portion of the August 2011 SIP submission in which EPA took no action in the October 17, 2012 final rule, specifically, the requirement to include condensables in the definition of "regulated NSR pollutant." Also, because condensables must be included in a PSD program by CAA section 110(a)(2)(C), (D)(i)(II) and (J), EPA is disapproving specific PSD portions of related infrastructure submissions which are necessary to implement, maintain, and enforce the 1997 $PM_{2.5}$ and ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead and ozone NAAQS.

III. Final Action

EPA is disapproving the narrow portion of West Virginia's August 2011 SIP submission related to the failure to include condensables in the definition of "regulated NSR pollutant" for $PM_{2.5}$ and PM_{10}. EPA is disapproving this narrow portion of West Virginia's August 2011 SIP submission because the definition does not satisfy the requirement that $PM_{2.5}$ and PM_{10} emissions must include gaseous emissions which condense to form particulate matter at ambient temperatures. Because these grounds for disapproval are narrow and extend only to the lack of condensables within the definition of "regulated NSR pollutant", this disapproval does not alter EPA's October 17, 2012 approval of the remaining portions of West Virginia's August 2011 SIP submittal.

Additionally, EPA is disapproving specific portions of West Virginia's infrastructure SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 (collectively, the West Virginia infrastructure SIP submissions) which address certain obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the West Virginia PSD permit program. Because West Virginia's definition of "regulated NSR pollutant" in 45CSR14 does not include condensable particulate emissions, EPA is determining that West Virginia's infrastructure SIP submissions do not meet certain statutory and regulatory obligations relating to a PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J). EPA is disapproving the narrow portion of the October 26, 2011 and February 17, 2012 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(C), (D)(i)(II), and (J) due to the failure to include condensables in the definition of "regulated NSR pollutant." EPA is also disapproving the narrow portions of the December 3, 2007, December 11, 2007, April 3, 2008, and October 1, 2009 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ and ozone NAAQS and the 2006 $PM_{2.5}$ NAAQS due to the failure to include condensables in the definition of "regulated NSR pollutant." Specific infrastructure elements which EPA is disapproving and their submittal dates are listed in the following table.

Submittal dates	NAAQS	Infrastructure element(s) disapproved in this action
December 11, 2007 April 3, 2008	1997 $PM_{2.5}$	110(a)(2)(D)(i)(II).
December 3, 2007 December 11, 2007	1997 ozone	110(a)(2)(D)(i)(II).
October 1, 2009	2006 $PM_{2.5}$	110(a)(2)(D)(i)(II).

Submittal dates	NAAQS	Infrastructure element(s) disapproved in this action
October 26, 2011	2008 lead	110(a)(2)(D)(i)(II), (C), and (J).
February 17, 2012	2008 ozone	110(a)(2)(D)(i)(II), (C), and (J).

Under CAA section 179(a), final disapproval of a submission that addresses a requirement of a Part D Plan (CAA sections 171–193), or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) starts a sanction clock. The specific provisions in the submissions EPA is disapproving, due to the omission of condensables in the definition of "regulated NSR pollutant", were not submitted by West Virginia to meet either of those requirements. Therefore, this disapproval does not trigger sanctions under CAA section 179.

The full or partial disapproval of a SIP revision triggers the requirement under CAA section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. From discussions with West Virginia, EPA anticipates that the State will make a submission rectifying the deficiency regarding condensables. Further, EPA anticipates acting on West Virginia's submissions within the two year time frame prior to our FIP obligation on this very narrow issue. In the interim, EPA expects the State to account for condensables in emissions of $PM_{2.5}$ and PM_{10} consistent with Federal regulations for PSD permitting.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this case, EPA disapproving a narrow portion of the West Virginia August 2011 SIP submittal and PSD portions of other related infrastructure submissions required by the CAA that do not meet Federal requirements. This action:

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

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this rule to disapprove a narrow provision in the August 2011 SIP submission and to disapprove narrow portions related to the definition of "regulated NSR pollutant" in the West Virginia infrastructure SIP submissions is not approved to apply in Indian country located in the state, and EPA notes that this action will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action disapproving a narrow portion of the August 2011 West Virginia SIP submissions and certain PSD related infrastructure submissions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2522, paragraph (j) is added to read as follows.

§ 52.2522 Approval status.

* * * * *

(j)(1) EPA is disapproving a narrow portion of West Virginia's August 31, 2011 submittal because it does not satisfy the requirement that emissions of $PM_{2.5}$ and PM_{10} shall include gaseous emissions which condense to form particulate matter at ambient temperatures. This disapproval extends only to the lack of condensable emissions within the definition of "regulated NSR pollutant," found at 45CSR14 section 2.66, and does not alter EPA's October 17, 2012 (77 FR 63736) approval of the remaining portions of West Virginia's August 2011 SIP submittal.

(2) EPA is disapproving specific portions of West Virginia's infrastructure SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 which address certain obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the West Virginia PSD permit program. Because West Virginia's definition of "regulated NSR pollutant" in 45CSR14 does not address condensables for $PM_{2.5}$ and PM_{10} emissions, EPA is determining that West Virginia's infrastructure SIP submissions do not meet certain statutory and regulatory obligations relating to a PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) for the narrow issue of condensables as set forth in the following table.

Submittal dates	NAAQS	Infrastructure element(s) disapproved in this action
December 11, 2007; April 3, 2008	1997 $PM_{2.5}$	110(a)(2)(D)(i)(II).
December 3, 2007; December 11, 2007	1997 ozone	110(a)(2)(D)(i)(II).
October 1, 2009	2006 $PM_{2.5}$	110(a)(2)(D)(i)(II).
October 26, 2011	2008 lead	110(a)(2)(D)(i)(II), (C), and (J).
February 17, 2012	2008 ozone	110(a)(2)(D)(i)(II), (C), and (J).

[FR Doc. 2013–10935 Filed 5–8–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0140; FRL–9810–8]

Approval and Promulgation of Implementation Plans; North Carolina; Control Techniques Guidelines and Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several State Implementation Plan (SIP) revisions submitted to EPA by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), to address the nitrogen oxides (NO_X) reasonably available control technology (RACT) requirements for the North Carolina portion of the Charlotte-Gastonia-Rock Hill, North Carolina—South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the "bi-state Charlotte Area"). The bi-state Charlotte Area for the 1997 8-hour ozone national ambient air quality standards (NAAQS) includes six full counties and one partial county in North Carolina; and one partial county in South Carolina. Additionally, EPA is approving in part, and conditionally approving in part, several SIP revisions to address the volatile organic compounds (VOC) RACT requirements which include related control technology guidelines (CTG) requirements. Together, these SIP revisions establish the RACT requirements for sources located in the North Carolina portion of the bi-state Charlotte Area. In a separate rulemaking, EPA has already taken action on RACT and CTG requirements for the South Carolina portion of the bi-state Charlotte Area. EPA has evaluated the revisions to North Carolina's SIP, and has made the determination that they are consistent, with the exception of applicability for some CTG VOC sources, with statutory and regulatory requirements and EPA guidance. With respect to the applicability provisions for the CTG VOC sources noted above, EPA is finalizing a conditional approval of these provisions.

DATES: *Effective Date:* This rule will be effective June 10, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0140. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On April 30, 2004, EPA designated the bi-state Charlotte Area as a moderate nonattainment area with respect to the 1997 8-hour ozone NAAQS.[1] *See* 69 FR

[1] Portions of the bi-state Charlotte Area were previously designated as a moderate nonattainment area for the 1-hour ozone NAAQS. The Area was subsequently redesignated to attainment for the 1-hour ozone NAAQS, and a maintenance plan was approved into the North Carolina SIP. The original Charlotte–Gastonia, North Carolina 1-hour moderate ozone nonattainment area consisted of Mecklenburg and Gaston counties in North Carolina.

23858. The bi-state Charlotte Area includes six full counties and one partial county in North Carolina; and one partial county in South Carolina. The North Carolina portion of the bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County which includes Davidson and Coddle Creek Townships.[2] The South Carolina portion of the bi-state Charlotte Area consists of the portion of York County, South Carolina that falls within the Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area. As a result of this moderate nonattainment designation, North Carolina and South Carolina were required to amend their SIPs for their respective portions of the bi-state Charlotte Area to satisfy the requirements of section 182 of the Clean Air Act (CAA or Act). Today's action specifically addresses the North Carolina portion of the bi-state Charlotte Area. EPA approved the RACT requirements for the South Carolina portion of the bi-state Charlotte Area on November 28, 2011. *See* 76 FR 72844.

Section 172(c)(1) of the CAA requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. RACT, a subset of RACM, relates specifically to stationary point sources. Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. The three parts of the section 182(b)(2) RACT requirements are: (1) RACT for sources covered by an existing CTG (i.e., a CTG issued prior to enactment of the 1990 amendments to the CAA); (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (i.e., non-CTG sources). Pursuant to 40 CFR 51.165, a major source for a moderate ozone area is a source that emits 100 tons per year (tpy) or more of VOC or NO_X. [3] [4] If no major sources of VOC or NO_X emissions (each pollutant should be considered separately) in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category. For more information regarding the RACT requirements, including requirements and schedules for sources covered by CTGs, see EPA's March 13, 2013, proposed rulemaking related to this final action at 78 FR 15895.

II. This Action

EPA is approving several SIP revisions submitted to EPA by the State of North Carolina, through NC DENR, to address the NO_X RACT requirements for the North Carolina portion of the bi-state Charlotte Area. Additionally, EPA is approving in part, and conditionally approving in part, several SIP revisions to address the VOC RACT requirements and related CTG requirements. Specifically, North Carolina submitted SIP revisions on October 14, 2004, April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, September 18, 2009, February 3, 2010, April 6, 2010, and November 9, 2010, to address NO_X RACT, VOC RACT and CTG requirements. Together, these SIP revisions establish the RACT requirements for the major sources located in the North Carolina portion of the bi-state Charlotte Area. In a separate rulemaking, EPA has already taken action on RACT and CTG requirements for the South Carolina portion of the bi-state Charlotte Area.

Today, EPA is approving the portions of five of the aforementioned SIP revisions as they relate to RACT requirements for the North Carolina portion of the bi-state Charlotte Area.[5] In addition to the SIP revisions, or portions of SIP revisions for which EPA is taking final approval, NC DENR submitted a letter on August 30, 2012, requesting that EPA conditionally approve portions of previously-submitted SIP revisions as they relate to VOC RACT and CTG requirements.[6] Specifically, NC DENR committed to submit specific enforceable SIP revisions to provide, within one year of EPA's final rulemaking, appropriate applicability thresholds for VOC RACT for all sources addressed by CTG in the Area. A copy of NC DENR's letter is provided in the docket for today's rulemaking and can be accessed at *www.regulations.gov* using docket ID: EPA–R04–OAR–2009–0140. Consistent with section 110(k)(4), EPA is conditionally approving portions of five of the aforementioned SIP revisions as they relate to VOC RACT and CTG requirements for the Area. Comprehensively, these SIP revisions address NO_X RACT, VOC RACT and CTG requirements for the Area.[7]

On March 13, 2013, EPA proposed to approve in part, and conditionally approve in part, the aforementioned SIP revisions provided by NC DENR to address NO_X and VOC RACT requirements. *See* 78 FR 15895. No comments, adverse or otherwise, were received on EPA's March 13, 2013, proposed rulemaking. EPA has evaluated the proposed revisions to North Carolina's SIP, and has made the determination that they are consistent with statutory and regulatory requirements and EPA guidance except for the applicability of the CTG VOC requirements to some sources. For further information regarding the conditionally approved rules, see Section II. A. (a), (b), (d), (f), and (i) of the proposed rulemaking for this action. *See* 78 FR 15895 (March 13, 2013). Consistent with section 110(k)(4) of the Act, EPA is relying upon a commitment by North Carolina to include appropriate applicability thresholds for VOC RACT for the all sources addressed by CTG in the Area as a basis for conditionally approving North Carolina's SIP revisions as they relate to VOC RACT. If the State fails to submit a SIP revision to correct the aforementioned deficiencies by May 9, 2014 today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

III. Final Action

EPA is taking final action to approve, in part, and conditionally approve in part, North Carolina SIP revisions submitted on October 14, 2004, April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, September 18, 2009, February 3, 2010, April 6, 2010, and November 9, 2010, to address NO_X RACT, VOC RACT and CTG requirements. Together, these SIP

[2] Effective July 20, 2012, EPA designated one full county and six partial counties in the bi-state Charlotte area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. Today's final rulemaking regarding RACT is not related to requirements for the 2008 8-hour ozone NAAQS.

[3] The emission threshold is based on an area's nonattainment designation classification. Section 182 of the CAA and 40 CFR 51.912(b) define "major source" for ozone nonattainment areas to include sources which emit or which have the potential to emit 100 tpy or more of VOC or NO_X (ozone precursors) in areas classified as "marginal" or "moderate," 50 tpy or more of these ozone precursors in areas classified as "serious," 25 tpy or more of these ozone precursors in areas classified as "severe," and 10 tpy or more of these ozone precursors in areas classified as "extreme." The bi-state Charlotte Area is a moderate nonattainment area.

[4] Section 182(b)(2) also requires that all CTG source category sources, including those with less than 100 tpy emissions, meet RACT. CTG sources are addressed later in this document.

[5] SIP revisions submitted on April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, and February 3, 2010.

[6] SIP revisions submitted on October 14, 2004, April 6, 2007, January 31, 2008, September 18, 2009, and November 9, 2010. See Section III below for additional information regarding the conditional approvals.

[7] South Carolina previously met the RACT requirements for the South Carolina portion of the bi-state Charlotte Area.

revisions establish the RACT requirements for the major sources located in the North Carolina portion of the bi-state Charlotte Area. EPA is approving in part, and conditionally approving in part these SIP revisions because they are consistent with the CAA and requirements related to VOC and NO_X RACT.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(c) Table 1, is amended under Subchapter 2D:

■ a. At section .0900 by:

■ i. Adding the entries for "Sect .0929," "Sect .0961," "Sect .0962," "Sect .0963," "Sect .0964," "Sect .0965," "Sect .0966," "Sect .0967" and "Sect .0968;" and

■ ii. Revising the entries for "Sect .0901," "Sect .0902," "Sect .0909," "Sect .0912," "Sect .0913," "Sect .0914," "Sect .0915," "Sect .0916," "Sect .0917," "Sect .0920," "Sect .0921," "Sect .0922," "Sect .0923," "Sect .0927," "Sect .0930," "Sect .0932," "Sect .0933," "Sect .0934," "Sect .0935," "Sect .0936," "Sect .0939," "Sect .0940," "Sect .0941," "Sect .0942," "Sect .0943," "Sect .0945," "Sect .0951;"

■ b. At section .1400 by:

■ i. Revising the title to read "Section .1400 Nitrogen Oxides;"

■ ii. Adding the entries for "Sect .1407," "Sect .1408," "Sect .1410," "Sect .1411," "Sect .1412," and "Sect .1415;" and

■ 3. Revising the entries for "Sect .1402," "Sect .1403," "Sect .1404," "Sect .1409," "Sect .1416," "Sect .1417," "Sect .1418," "Sect .1419," "Sect .1420," "Sect .1421," and "Sect .1422;" and

■ c. By adding a new section entitled "Section .2600 Source Testing" and adding the new entries for "Sect .2601," "Sect .2602," "Sect .2603," "Sect .2604," "Sect .2605," "Sect .2606," "Sect .2607," "Sect .2608," "Sect .2612," "Sect .2613," "Sect .2614," "Sect .2615," and "Sect .2621" to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
* * * * * * *				
Section .0900 Volatile Organic Compounds				
Sect .0901	Definitions	1/1/2009	5/9/2013 [Insert citation of publication].	
Sect .0902	Applicability	9/1/2010	5/9/2013 [Insert citation of publication].	Conditional approval of rule .0902 as submitted on 10/14/2004 (with the exception of the start-up shutdown language as described in Section II. A. a. of EPA's 3/13/2013 proposed rule (78 FR 15895)), 4/6/2007, 1/31/2008, 9/18/2009, and 11/9/2010.
* * * * * * *				
Sect .0909	Compliance Schedules for Sources in Nonattainment Areas.	9/1/2010	5/9/2013 [Insert citation of publication].	Conditional approval of rule .0909 as submitted on 4/6/2007, 1/31/2008, 9/18/2009, and 11/9/2010.
* * * * * * *				
Sect .0912	General Provisions on Test Methods and Procedures.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .0913	Determination of Volatile Content of Surface Coatings.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0914	Determination of VOC Emission Control System Efficiency.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0915	Determination of Solvent Metal Cleaning VOC Emissions.	6/1/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0916	Determination: VOC Emissions From Bulk Gasoline Terminals.	6/1/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0917	Automobile and Light Duty Truck Manufacturing.	9/1/2010	5/9/2013 [Insert citation of publication].	Repealed.
* * * * * * *				
Sect .0920	Paper Coatings	9/1/2010	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0921	Fabric and Vinyl Coating	9/1/2010	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0922	Metal Furniture Coating	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0923	Surface Coating of Large Appliance Parts.	9/1/2010	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Sect .0927	Bulk Gasoline Terminals	6/1/2008	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Sect .0929	Petroleum Refinery Sources	4/6/2010	5/9/2013 [Insert citation of publication].	Repealed—North Carolina made a negative declaration for VOC emissions from bulk gasoline plants on 4/6/2010.

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Sect .0930	Solvent Metal Cleaning	6/1/2008	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Sect .0932	Gasoline Truck Tanks and Vapor Collection Systems.	11/7/2007	5/9/2013 [Insert citation of publication].	
Sect .0933	Petroleum Liquid Storage in External Floating Roof Tanks.	8/1/2004	5/9/2013 [Insert citation of publication].	
Sect .0934	Coating of Miscellaneous Metal Parts and Products.	9/1/2010	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0935	Factory Surface Coating of Flat Wood Paneling.	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0936	Graphic Arts	9/1/2010	5/9/2013 [Insert citation of publication].	Repealed.
* * * * * * *				
Sect .0939	Determination of Volatile Organic Compound Emissions.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0940	Determination of Leak Tightness and Vapor Leaks.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0941	Alternative Method for Leak Tightness.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0942	Determination of Solvent in Filter Waste.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .0943	Synthetic Organic Chemical and Polymer Manufacturing.	11/7/2007	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Sect .0945	Petroleum Dry Cleaning	11/7/2007	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Sect .0951	RACT for Sources of Volatile Organic 3 Compounds.	9/1/2010	5/9/2013 [Insert citation of publication].	Conditional approval of rule .0951 as submitted on 11/9/2010.
* * * * * * *				
Sect .0961	Offset Lithographic Printing and Letterpress Printing.	9/1/2010	5/9/2013 [Insert citation of publication].	Conditional approval of rule .0961 as submitted on 11/9/2010.
Sect .0962	Industrial Cleaning Solvents	9/1/2010	5/9/2013 [Insert citation of publication].	Conditional approval of rule .0962 as submitted on 11/9/2010.
Sect .0963	Fiberglass Boat Manufacturing	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0964	Miscellaneous Industrial Adhesives.	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0965	Flexible Package Printing	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0966	Paper Film and Foil Coatings	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0967	Miscellaneous Metal and Plastic Parts Coatings.	9/1/2010	5/9/2013 [Insert citation of publication].	
Sect .0968	Automobile and Light Duty Truck Assembly Coatings.	9/1/2010	5/9/2013 [Insert citation of publication].	
* * * * * * *				
Section .1400 Nitrogen Oxides				

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Sect .1402	Applicability	1/1/2010	5/9/2013 [Insert citation of publication].	
Sect .1403	Compliance Schedules	7/1/2007	5/9/2013 [Insert citation of publication].	
Sect .1404	Recordkeeping: Reporting: Monitoring.	5/1/2004	5/9/2013 [Insert citation of publication].	
Sect .1407	Boilers and Indirect Process Heaters.	7/15/2002	5/9/2013 [Insert citation of publication].	
Sect .1408	Stationary Combustion Turbines	7/15/2002	5/9/2013 [Insert citation of publication].	
Sect .1409	Stationary Internal Combustion Turbines.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1410	Emissions Averaging	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1411	Seasonal Fuel Switching	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1412	Petition for Alternative Limitations	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1415	Test Methods and Procedures	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1416	Emission Allocations for Utility Companies.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .1417	Emission Allocations for Large Combustion Sources.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .1418	New Electric Generating Units, Large Boilers, and Large Internal Combustion Engines.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .1419	Nitrogen Oxide Budget Trading Program.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .1420	Periodic Review and Reallocations.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .1421	Allocations for New Growth of Major Point Sources.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
Sect .1422	Compliance Supplement Pool Credits.	3/13/2008	5/9/2013 [Insert citation of publication].	Repealed.
*	*	*	*	*
	Section .2600 Source Testing			
Sect .2601	Purpose and Scope	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2602	General Provisions on Test Methods.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2603	Testing Protocol	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2604	Number of Test Points	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2605	Velocity and Volume Flow Rate	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2606	Molecular Weight	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2607	Determination of Moisture Content.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2608	Number of Runs and Compliance Determination.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2612	Nitrogen Oxide Testing Methods	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2613	Volatile Organic Compound Testing Methods.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2614	Determination of VOC Emission Control System.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2615	Determination of Leak Tightness and Vapor Leaks.	3/13/2008	5/9/2013 [Insert citation of publication].	
Sect .2621	Determination of Fuel Heat Content Using F-Factor.	3/13/2008	5/9/2013 [Insert citation of publication].	

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*

* * * * *

[FR Doc. 2013–10944 Filed 5–8–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket EPA–R10–OAR–2009–0340; FRL–9794–2]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Mendenhall Valley Nonattainment Area PM_{10} Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) submitted by the State of Alaska on May 8, 2009, for the Mendenhall Valley nonattainment area (Mendenhall Valley NAA), and to concurrently redesignate the area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

DATES: This direct final rule will be effective July 8, 2013, without further notice, unless the EPA receives adverse comments by June 10, 2013. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The EPA will then address all public comments in a subsequent final rule.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2009–0340, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Keith Rose, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2009–0340. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Keith Rose at: (206) 553–1949, *rose.keith@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, it is intended to refer to the EPA.

Table of Contents

I. Background

A. PM_{10} National Ambient Air Quality Standards

"Particulate matter," also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets. The size of particles is directly linked to their potential for causing health problems. The EPA is concerned about particles that are 10 micrometers in diameter or smaller because those are the particles that generally pass through the throat and nose and enter the lungs. Once inhaled, these particles can affect the heart and lungs and cause serious adverse health effects. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy individuals may experience temporary symptoms from exposure to elevated levels of particle pollution.

On July 1, 1987, the EPA promulgated two primary NAAQS for PM_{10}: a 24-hour standard of 150 micrograms per cubic meter ($\mu g/m^3$) and an annual standard of 50 $\mu g/m^3$, expressed as an annual arithmetic mean (52 FR 24634). The EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. In a rulemaking action effective December 18, 2006, the EPA retained the 24-hour PM_{10} standard but revoked the annual PM_{10} standard (71 FR 61144, October 17, 2006).

B. Mendenhall Valley Nonattainment Area and Planning Background

On August 7, 1987, the EPA identified a number of areas across the country as PM_{10} "Group I" areas of concern, that is, areas with a 95% or greater likelihood of violating the PM_{10} NAAQS and requiring substantial planning efforts (52 FR 29383). The Mendenhall Valley NAA was identified as a Group I area of concern.

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or Act) were designated nonattainment for PM_{10} by operation of law and classified "moderate" upon enactment of the 1990 CAA Amendments. These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383 (August 7, 1987), and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 CAA Amendments, known as "initial" PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101). The Mendenhall Valley NAA was one of these initial moderate PM_{10} nonattainment areas.

Geographically, the Mendenhall Valley NAA extends from the northern boundary of the Juneau Airport north through the Mendenhall Valley to the southern edge of the Mendenhall Glacier near Nugget Creek. To the east and west the Mendenhall Valley NAA is bounded by steep ridge crests rising more than 1000 feet from the valley floor.

All initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994. States containing initial moderate PM_{10} nonattainment areas were required by section 189(a) of the CAA to develop and submit to the EPA by November 15, 1991, a state implementation plan (SIP) revision providing for implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM_{10} NAAQS by the December 31, 1994 attainment date was practicable. On September 12, 1994, the original attainment date for the Mendenhall Valley NAA was extended to December 31, 1995, under the authority of section 188(d) of the CAA (60 FR 47276). The EPA fully approved the Mendenhall Valley attainment plan on March 24, 1994 (59 FR 13884). The control measures submitted by the State include a comprehensive residential wood combustion program and controls on fugitive road dust.

On July 16, 2010, the EPA published a **Federal Register** action with its determination that, based on air quality monitoring data collected at two sites (Floyd Dryden Middle School and Trio Street) in the Mendenhall Valley NAA, the Mendenhall Valley NAA had attained the NAAQS for PM_{10} as of the extended attainment date of December 31, 1995 (75 FR 41379). The EPA noted that for the three-year period from 1993–1995, there were no violations of the annual PM_{10} standard. In this attainment determination, the EPA also reviewed the air quality data collected at the Floyd Dryden monitoring site from January 1996 through December 2009 (the Trio Street site ceased operation in 1997), determined that there were no exceedances recorded at this monitoring site, and concluded that the area continued to be in compliance with the 24-hour PM_{10} NAAQS during this period.

On May 8, 2009, the State submitted a LMP for the Mendenhall Valley NAA for approval and requested that the EPA redesignate the Mendenhall Valley NAA to attainment for the PM_{10} NAAQS. In today's action, the EPA is approving the LMP for the Mendenhall Valley NAA and granting the request by the State to redesignate the area from nonattainment to attainment for PM_{10}.

C. PM_{10} Emissions Inventory of the Mendenhall Valley Nonattainment Area

The emissions inventory that the Alaska Department of Environmental Conservation (ADEC) submitted with the Mendenhall Valley NAA PM_{10} LMP, for base year 2004 and projected year 2018, identifies the significant contributions to PM_{10} emissions as: wood smoke from residential wood combustion, fugitive dust from travel on unpaved roads; and fugitive dust from travel on paved roads. PM_{10} emissions from wood burning were estimated to account for less than 2% of PM_{10} emissions in 2004 and are projected to remain close to that level through 2018. Fugitive dust emissions from travel on unpaved roads were estimated to be 5.2% of PM_{10} emissions in 2004 and are projected to be 5.3% in 2018. Fugitive dust emissions from travel on paved roads were estimated to account for 83% of PM_{10} emissions in 2004, and are projected to account for 84% of emissions in 2018.

II. Requirements for Redesignation

A. Clean Air Act (CAA) Requirements for Redesignation of Nonattainment Areas

A nonattainment area can be redesignated to attainment after the area has measured air quality data showing the NAAQS has been attained, and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I provide the criteria for redesignation (57 FR 13498, April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, dated September 4, 1992, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni Memo). The criteria for redesignation are:

1. the Administrator has determined that the area has attained the applicable NAAQS;
2. the Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;
3. the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA;
4. the Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and

5. the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

B. The LMP Option for PM_{10} Nonattainment Areas

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled "Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas" (LMP Option Memo)). The LMP Option Memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. As a result, future-year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary.

To qualify for the LMP Option, the area should have attained the PM_{10} NAAQS and, based upon the most recent five years of air quality data at all monitors in the area, the 24-hour design value should be at or below 98 $\mu g/m^3$.[1] If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the area is less than the site-specific critical design value (CDV). In addition, the area should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP Option Memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the LMP Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While the EPA's LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM_{10} NAAQS would result. For transportation conformity purposes, the EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in 40 CFR 93.158 (a)(5)(i)(A).

III. Review of the Alaska Submittal Addressing the Requirements for Redesignation and LMP

A. Has the Mendenhall Valley NAA attained the applicable NAAQS?

To demonstrate that an area has attained the PM_{10} NAAQS, states must submit an analysis of ambient air quality data from ambient air monitoring sites in the NAA representing peak PM_{10} concentrations. The data should be stored in the EPA Air Quality System database. An area has attained the 24-hour PM_{10} NAAQS of 150 ug/m^3 if the average number of expected exceedences per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements at 40 CFR part 58, including appendices.

As stated in section I.B of this notice, in 2010 the EPA determined that the Mendenhall Valley NAA attained the PM_{10} NAAQS by December 31, 1995 (75 FR 41379). In this previous action, the EPA also reviewed the air quality data collected at the Floyd Dryden monitoring site in the Mendenhall Valley NAA from January 1996 through December 2009, determined that there were no exceedances recorded at this monitoring site, and concluded that the area continued to be in compliance with the 24-hour PM_{10} NAAQS during this period.

B. Does the Mendenhall Valley NAA have a fully approved SIP under Section 110(k) of the CAA?

To qualify for redesignation, the SIP for an area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. The EPA approved Alaska's attainment plan for the Mendenhall Valley NAA on March 24, 1994 (59 FR 13884). Thus, the area has a fully approved attainment area SIP under section 110(k) of the Act.

C. Has the state met all applicable requirements under section 110 and part D of the CAA?

Section 107(d)(3)(E) of the CAA requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and part D of the CAA for the area to be redesignated to attainment. The EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Alaska meets these requirements.

1. CAA Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for attainment plans. These requirements include, but are not limited to: submittal of a SIP that has been adopted by the state after reasonable opportunity for notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for part C—Prevention of Significant Deterioration (PSD) and part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation. See the April 16, 1992 General Preamble (57 FR 13498) for further explanation of these requirements. For purposes of this redesignation, the EPA review of the Alaska SIP shows that the State has satisfied the requirements of section 110(a)(2) of the Act. Further, in 40 CFR 52.72, the EPA has approved Alaska's plan for the attainment and maintenance of the national standards under section 110.

2. CAA Part D Requirements

Part D of the Act contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the general provisions of subpart 1 "Non-attainment Areas in general", and the specific PM_{10} provisions in subpart 4 "Additional Provisions for Particulate Matter Nonattainment Areas". The

[1] On October 17, 2006, subsequent to the issuance of the 2001 LMP option Memo, the EPA revoked the annual PM_{10} standard (71 FR 61114).

following paragraphs discuss these requirements as they apply to the Mendenhall Valley NAA.

2(a). Part D, Subpart 1, Section 172(c) Reasonable Further Progress (RFP)

Subpart 1, section 172(c) of the Act contains general requirements for nonattainment area plans, including reasonable further progress. The requirements for RFP, and identification of other measures needed for attainment, were satisfied with the approval of the Mendenhall Valley attainment plan (59 FR 13884, March 24, 1994).

2(b). Part D, Section 172(c)(3) Emissions Inventory

For redesignations, section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources in the PM_{10} nonattainment area. Alaska included with its submittal a 2004 baseline year emissions inventory and projected emissions for 2018. The requirement for a current, accurate and comprehensive emission inventory is satisfied by the emissions inventory contained in the Mendenhall Valley LMP.

2(c). Part D, Section 172(c)(5) New Source Review (NSR)

The State must have an approved NSR program that meets the requirements of CAA section 172(c)(5). Alaska's NSR program was originally approved into the Alaska SIP by the EPA on July 5, 1983, and has been revised several times. The EPA most recently approved Alaska's NSR program on August 14, 2007 (72 FR 45378). In the Mendenhall Valley, the requirements of the part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) requirements upon the effective date of redesignation. Alaska's PSD program was originally approved into the SIP by the EPA on July 5, 1983, and has been revised several times. The EPA most recently approved Alaska's regulations on February 9, 2011, as meeting the requirements of part C for preventing significant deterioration of air quality (76 FR 7116).

2(d). Part D, Section 172(c)(7)—Compliance With CAA Section 110(a)(2)—Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify the attainment status of the area. From 1986 until the present, the State of Alaska has operated a PM_{10} monitor at the Floyd Dryden Middle School in the Mendenhall Valley. In the LMP that we are approving today, the State commits to continued operation of a monitoring network that meets the EPA network design and siting requirements set forth in 40 CFR part 58.

2(e). Part D, Section 172 (c)(9) Contingency Measures

The CAA requires that contingency measures take effect if the area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Because the Mendenhall Valley area attained the NAAQS for PM_{10} by the attainment date of December 31, 1995, contingency measures are no longer required under section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under section 175(a)(d). Alaska provided contingency measures in the LMP. We describe the contingency measures in our evaluation of the LMP in section III.I below.

2(f). Part D, Subpart 4

Part D subpart 4, sections 189(a), (c) and (e) of the CAA apply to any moderate nonattainment area before the area can be redesignated to attainment. Any of these requirements which were applicable to the submission of the redesignation request must be fully approved into the SIP before redesignating the area to attainment. These requirements include the following:

(a) Provisions to assure that reasonably available control (RACM) measures were implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every three years and which demonstrate reasonable further progress toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area.

All of the above provisions were fully approved into the SIP upon the EPA approval of the PM_{10} attainment plan for the Mendenhall Valley NAA on March 24, 1994 (59 FR 13884).

D. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

Section 107(d)(3)(E)(iii) of the CAA provides that a nonattainment area may not be redesignated unless the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP. Therefore, the state must be able to demonstrate that the improvement in air quality is due to permanent and enforceable emission reductions. This demonstration should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Permanent and enforceable control measures in the Mendenhall Valley NAA SIP are identified in the "Control Plan for Mendenhall Valley of Juneau," state-effective July 8, 1993, and approved into the SIP on March 24, 1994 (59 FR 13884). These control measures, which include RACM for fugitive dust and enforceable wood smoke ordinances, continue to remain in the SIP. In addition, ADEC revised 18 Alaska Administrative Code (AAC) 50.075 to reference an updated ordinance titled "An Ordinance Amending the Woodsmoke Control Program Regarding Solid Fuel-Fired Burning Devices, Serial No. 2008–28" that requires more stringent controls on solid fuel-fired devices, lowers the particulate matter threshold for calling air pollution emergencies, and imposes restrictions on outdoor burning. These measures strengthen PM_{10} emission controls in the Mendenhall Valley NAA over the previously enacted Juneau woodsmoke ordinance approved by EPA in 1994 (59 FR 13884). EPA is therefore approving revised 18 AAC 50.075 and the ordinance referenced in 18 AAC 50.075(c) as measures that strengthen the SIP.

EPA is taking no action on 18 AAC 50.030, State Air Quality Control Plan, which adopts by reference Volumes II and III of the State Air Quality Control Plan and other documents (as a matter of state law), whether or not they have yet been submitted to or approved by the EPA. We are taking no action on the revisions to 18 AAC 50.030 because EPA takes action directly, as appropriate, on the specific provisions in the State Air Quality Control Plan that have been submitted by ADEC, so it is unnecessary for EPA to approve 18 AAC 50.030. The federally-approved

SIP consists only of regulations and other requirements that have been submitted by ADEC and approved by EPA.

The EPA has concluded that areas that qualify for the LMP Option will meet the NAAQS, even under worst case meteorological conditions. Under the LMP Option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. Alaska has demonstrated that the air quality improvements in the Mendenhall Valley NAA are the result of permanent emission reductions and not a result of either economic trends or meteorology by qualifying for the LMP Option. A description of the LMP qualifying criteria and how the Mendenhall Valley area meets these criteria are provided in the following sections.

E. Does the area have a fully approved maintenance plan pursuant to Section 175A of the CAA?

In this action, we are approving the Mendenhall Valley LMP in accordance with the principles outlined in the LMP Option Memo. Upon the effective date of this action, the area will have a fully approved maintenance plan.

F. Has the State demonstrated that the Mendenhall Valley NAA qualifies for the LMP option?

The LMP Option Memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. As stated above in section III.A, the EPA has determined that the Mendenhall Valley NAA has been in attainment of the PM_{10} NAAQS since 1995 and continued to meet the PM_{10} NAAQS for the period 2007–2011, which is the most recent five years of data.

Second, in order to qualify for the LMP Option, the 24-hour PM_{10} annual design value must be at or below 98ug/m^3, based on the most recent five years of air quality data at all monitors in the area, and there should no violations of the PM_{10} standard at any monitor in the nonattainment area. To determine if the Mendenhall Valley NAA meets these requirements, the EPA reviewed the most recent five years of data (2007–2011) from the Floyd Dryden monitoring site to determine if the 24-hour annual design value was at or below 98 µg/m^3, which would qualify the area for the LMP Option. However, in reviewing the 2007–2011 data from the Floyd Dryden monitor for that period, the EPA found that one quarter in 2008 and one quarter in 2009 had data completeness below 75%, the level needed to allow use of data to calculate the annual design value. Therefore, to use data for these quarters to determine a 24-hour annual design value, data substitution was used pursuant to the EPA regulation (40 CFR part 50, Appendix K, § 2.3(b)) and guidance (Guidelines on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards, EPA 450/4–87/005, April 1987) . For this case, data substitution was performed using the Tabular Estimation Method, which is one of the methods identified in the "PM_{10} SIP Development Guideline" (EPA–450/2–86–001, June 1987). A more detailed description of this data substitution method, and the comparison to three other acceptable data substitution methods, are discussed in the technical support document (TSD) which can be found in the docket for this final rule (Memorandum by Chris Hall dated August 23, 2012). Based on the data substitution performed using the Tabular Estimation Method, the EPA determined that the 24-hour annual design value for the Mendenhall Valley NAA for 2007–2011 was 45 ug/m^3. Also, there have been no violations of the PM_{10} standard at any monitor in the nonattainment area over the past five years.

Third, the area must meet the motor vehicle regional emissions analysis test as required in the LMP Option Memo. The State's submittal demonstrates that when the PM_{10} design value for the Mendenhall Valley NAA is adjusted for future on-road mobile emissions, the annual design value for Mendenhall Valley NAA is 56.8 µg/m^3. This value is substantially less than the LMP threshold value of 98 µg/m^3, so the Mendenhall Valley NAA also qualifies for the LMP Option based on this criterion. Therefore, the Mendenhall Valley NAA meets the above three requirements to qualify for the LMP Option.

The LMP Option Memo also indicates that once a State selects the LMP Option and it is in effect, the State will be expected to determine, on an annual basis, that the LMP criteria are still being met. In the Mendenhall Valley LMP, the State commits to evaluate, on an annual basis, compliance with the LMP criteria within the Mendenhall Valley NAA.

G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?

Pursuant to the LMP Option Memo, the state's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during one of the years associated with air quality data used to determine whether the area meets the applicability criteria for the LMP Option. If the attainment inventory is not for one of the most recent five years, but the state can show that the attainment inventory did not change significantly during that five-year period, it may be still used to satisfy the LMP Option requirements. The state should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

For the Mendenhall Valley NAA, Alaska completed an attainment year inventory for 2004. After reviewing the 2004 emissions inventory and determining that it is current, accurate and complete, the EPA has determined that the 2004 emissions inventory is representative of the attainment year inventory. Alaska demonstrated that the emissions inventory submitted with the LMP for the calendar year 2004 is representative of the level of emissions during the time period used to determine attainment of the NAAQS (1995–2004). In addition, since the projected population growth rate of the Juneau area, which includes the Mendenhall Valley NAA, is less than 1.0% per year (see in the docket, SIP submittal Volume III, Appendix III.D.3.8), the EPA believes that the 2004 emission inventory is also representative of the most recent five year period (2007–2011) for which air quality data was used to determine if the area meets the applicability criteria of the LMP Option. Thus, the EPA has determined that the Mendenhall Valley LMP submittal meets the requirements of the LMP Option Memo, as described above, for purposes of an attainment emissions inventory.

H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58?

Alaska conducted PM_{10} monitoring at three sites in the Mendenhall Valley in the 1980s and 1990s. This monitoring network was developed and has been maintained in accordance with Federal siting and design criteria as set forth in 40 CFR part 58, Appendices D and E, and in consultation with EPA Region 10. Currently, monitoring for PM_{10} in the Mendenhall Valley occurs at only one site, Floyd Dryden Middle School. In its LMP submittal, the State commits to continued operation of this monitoring site.

I. Does the plan meet the CAA requirements for contingency provisions?

CAA section 175A requires that a maintenance plan include contingency measures to ensure prompt correction of any violation of the standard that occurs after the redesignation of the area to attainment. As explained in the LMP Option Memo, these contingency measures do not have to be fully adopted at the time of redesignation. The Mendenhall Valley LMP describes the a process to identify and evaluate appropriate contingency measures in the event of a quality assured violation of the PM_{10} NAAQS. Within 30 days following a violation of the PM_{10} NAAQS, the City and Borough of Juneau and ADEC will convene to identify appropriate measures to control sources of the major PM_{10} contributors to the Mendenhall Valley, fugitive dust and woodstoves, as described below.

Contingency measures that may be implemented for the control of fugitive dust include: controlling spills from trucks hauling particulate-producing materials, requiring installation of liners on truck beds, requiring watering of loads, requiring cargo that cannot be controlled by other measures to be covered, establishing controls on construction carryout and entrainment, requiring construction activities to be conducted so as to limit and remove the accumulation of dust generating materials, requiring paving of construction site access roads, requiring the developer of a construction site to clean soil from access roads and public roadways, requiring stabilization of unpaved areas adjacent to paved roads, controlling storm water runoff of eroded materials onto the streets, developing adequate storm water control systems, and requiring vegetation to stabilize the sides of roads.

Contingency measures that may be implemented to control wood smoke from residential wood heating include: establishing an enhanced public information campaign including education in stove selection, sizing, installation, operation, and maintenance practices to minimize emissions; encouraging improved performance of wood burning devices such as providing voluntary dryness certification programs for dealers and making inexpensive wood moisture checks available to wood burners; and providing inducements that would lead to reductions in the number of stoves and fireplaces.

The EPA believes that these contingency measures in the Mendenhall Valley LMP meet the requirements for the contingency measures as outlined in the LMP Option Memo.

J. Has the State met conformity requirements?

(1) Transportation Conformity

Although the EPA's LMP Option Memo does not exempt an area from the need to demonstrate conformity, it allows the area to do so without submitting an emissions budget, if estimated population growth indicates that there will be no violation of the NAAQS due to population growth. For transportation purposes, the emissions in a qualifying LMP area need not be capped for the maintenance period and thus no regional emissions analysis is required. Regional transportation conformity is presumed due to the limited potential for emission growth in the NAA during the LMP period.

Under the LMP Option Memo, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

(a) transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;

(b) transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

(c) the MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The EPA believes that the provisions in the Mendenhall Valley LMP adequately address the transportation conformity requirements of 40 CFR part 93, subpart A.

(2) General Conformity

For Federal actions required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that "the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP" (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Alaska has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity. The EPA believes that the provisions in the Mendenhall Valley LMP adequate adequately address the General Conformity requirements of 40 CFR 93.158(a)(5)(i)(A).

IV. Final Action

The EPA is taking direct final action to approve the PM_{10} LMP for the Mendenhall Valley NAA adopted on February 20, 2009, and submitted on May 8, 2009, by the State of Alaska, and to concurrently redesignate the Mendenhall Valley NAA to attainment for the PM_{10} NAAQS. The EPA has determined that the Mendenhall Valley NAA has met all the CAA requirements for redesignation of a nonattainment area, and that the Mendenhall Valley NAA 24-hour design value for the most recent five years of data was below the threshold to qualify this area for the LMP Option. The EPA is also approving revised 18 AAC 50.075 and the ordinance referenced in 18 AAC 50.075(c) as SIP strengthening measures.

EPA is taking no action on 18 AAC 50.030, State Air Quality control Plan, for the reasons provided in section III.D.

V. Statutory and Executive Order Reviews

Under Section 110(k) of the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, Particulate matter, National parks, Wilderness areas.

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

Dated: March 12, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(42) to read as follows:

§ 52.70 Identification of plan.

(c) * * *

(42) On May 14, 2009, the Alaska Department of Environmental Conservation submitted a PM_{10} limited maintenance plan and requested the redesignation of the Mendenhall Valley to attainment for PM_{10}. The state's limited maintenance plan and redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Alaska Administrative Code, Title 18, Chapter 50 Air Quality Control, Section 075 "Wood-fired heating devise visible emission standards," effective May 6, 2009.

(B) Alaska Department of Environmental Conservation State Air Quality Control Plan, Volume III, Appendix III.D.3.5, Ordinance of the City and Borough of Juneau, Alaska, Serial No. 2008–28, adopted February 20, 2009

■ 3. Section 52.73 is amended by revising paragraph (e) to read as follows:

§ 52.73 Approval of plans.

* * * * *

(e) *Particulate matter.* (1) *Mendenhall Valley.* (i) The EPA approves as a revision to the Alaska State Implementation Plan, the Mendenhall Valley PM_{10} Limited Maintenance Plan (Volume II, Section III.D.3 of the State Air Quality Control Plan, and Volume III.D.3.5, Volume III.D.3.8, and Volume III.D.3.9 of the Appendices (to Volume II, section III.D.3)) adopted February 20, 2009, and submitted by the Alaska Department of Environmental Conservation to the EPA on May 14, 2009.

(ii) [Reserved]

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. In § 81.302, the table entitled "Alaska–PM–10" is amended by revising the table entry for "Juneau" to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Juneau	7/8/2013			
City of Juneau		Attainment.		
Mendenhall Valley area.				
* * * * * * *				

* * * * *

[FR Doc. 2013–10939 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–11600; PPWOCRADN0–PCU00RP14.550000]

RIN 1024–AD99

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises regulations implementing the Native American Graves Protection and Repatriation Act for accuracy and consistency.

DATES: The rule is effective June 10, 2013.

FOR FURTHER INFORMATION CONTACT:

- *Mail:* Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., 8th Floor, Washington, DC 20005.
- *Telephone:* (202) 354–1479, Fax: (202) 371–5197. Email: *sherry_hutt@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuance of appropriate regulations implementing and interpreting its provisions. NAGPRA addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations in certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Pursuant to Section 13 of NAGPRA (25 U.S.C. 3011), the Department of the Interior (Department) published the initial rules to implement NAGPRA in 1995 (60 FR 62158, December 4, 1995), which have been codified at 43 CFR Part 10. Subsequently, the Department published additional rules concerning:

- Civil penalties (68 FR 16354, April 3, 2003);
- Future applicability (72 FR 13189, March 21, 2007); and
- Disposition of culturally unidentifiable human remains (75 FR 12378, March 15, 2010).

Since 1995, minor inaccuracies or inconsistencies in 43 CFR Part 10 have been identified by or brought to the attention of the Department. On April 18, 2012, we published in the **Federal Register** proposed amendments to provide for factual accuracy and consistency throughout 43 CFR Part 10 by revising 43 CFR 10.2(c)(1), 10.2(c)(3), 10.4(d)(1)(iii), 10.5(b)(1)(i), 10.6(a)(2), 10.6(a)(2)(iii)(B), 10.8(e), 10.10(a)(1)(ii)(B), 10.10(b)(1)(ii)(B), 10.10(c)(2), 10.10(g), 10.11(b)(2)(ii), 10.12(c), 10.12 (i)(3), 10.12(j)(1), 10.12(j)(6)(i), 10.12(k)(1), 10.12(k)(3), 10.13(c)(2), 10.15(c)(1), 10.15(c)(1)(ii), Appendix A, and Appendix B.

Summary of and Responses to Comments

The proposed rule to revise 43 CFR Part 10 for the purposes of accuracy and consistency was published in the **Federal Register** on April 18, 2012 (77 FR 23196). Public comment was invited for a 60-day period, ending June 18, 2012. The proposed rule also was posted on the National NAGPRA Program Web site. The Native American Graves Protection and Repatriation Review Committee commented on the proposed rule at a public meeting on May 10, 2012. In addition, 16 written comments on the proposed minor amendments, contained in 19 separate submissions, were received during the comment period from 13 Indian tribes, 2 Indian organizations, 3 Native Hawaiian organizations, 1 museum, 1 museum and scientific organization, 1 Federal entity, 1 individual member of the public, and 1 other organization. All relevant comments on the proposed rule were considered during the final rulemaking. The comments we received that went beyond the scope of the proposed rule will be taken into account during any subsequent review and rulemaking regarding 43 CFR Part 10.

Authority

Comment 1: Ten commenters stated that the proposed rule revises the authority citation for Part 10, and that they oppose this purported revision.

Our Response: The proposed rule did not intend to revise the authority citation for Part 10. Based on the promulgation of 43 CFR 10.11 and related amendments in 2010 (75 FR 12378, March 15, 2010), the authority citation for Part 10 remains 25 U.S.C. 3001 *et seq.*, 16 U.S.C. 470dd(2), and 25 U.S.C. 9, and it is explicitly stated as such in this final rule.

The Mailing Address of the National NAGPRA Program

Comment 2: Seven commenters recommended that the Main Interior Building address currently in the regulations be retained as the mailing address for the National NAGPRA Program because that address is unlikely to change and because access to the internet for purposes of obtaining the current, direct mailing address of the National NAGPRA Program is not easily or universally accessible, particularly in rural, tribal communities.

Our Response: The rule revises the mailing address for the National NAGPRA Program in §§ 10.2(c)(3), 10.12(c), and 10.12(i)(3) by removing an indirect address and replacing it with the Web site address where the National NAGPRA Program's current, direct mailing address can always be found. The intent of this revision is to improve communications with the National NAGPRA Program. Communications that are not received in a timely manner could adversely affect the treatment of a NAGPRA grant request, a response to a NAGPRA civil penalty notice, or a request to the Review Committee. By

referring the public to the National NAGPRA Program Web site, the address of the National NAGPRA Program will remain current. Furthermore, the Department believes that reducing the risk of untimely communications outweighs the inconvenience of limitations on access to the Internet, as any change in the National NAGPRA Program's address will be infrequent: Telephone access to the National NAGPRA Program for inquiries related to the National NAGPRA Program's mailing address is also always available.

Terminology

Comment 3: Nine commenters recommended that the term "human remains" not be shortened to "remains" and that "associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony" not be shortened to "objects."

Our Response: The proposed rule shortened the term "human remains" to "remains" and shortened "associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony" to "objects" in §§ 10.4(d)(1)(iii), 10.5(b)(1)(i), 10.6(a)(2)(iii)(B), 10.8(e), 10.10(c)(2), and 10.15(c)(1)(i). Although the Department believes that, in context, "remains" clearly means "human remains" and "objects" clearly means "associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony," and although NAGPRA uses these shortened forms as well (see 25 U.S.C. 3002(a)), we agree with these comments and the final rule does not shorten these terms, but instead uses the terms "human remains," "associated funerary objects," unassociated funerary objects," "sacred objects," and "objects of cultural patrimony" as appropriate.

The Secretary of the Interior's Authority To Delegate the Secretary's Responsibilities Under NAGPRA

Comment 4: Seven commenters stated that the proposed rule revises the Secretary of the Interior's authority to delegate the Secretary's responsibilities under NAGPRA.

Our Response: The rule is not intended to revise the Secretary of the Interior's existing authority to delegate the Secretary's responsibilities under NAGPRA.

Comment 5: Seven commenters recommended that responsibilities throughout 43 CFR Part 10 remain with political appointees to ensure that these duties are supervised at the highest level in the Department.

Our Response: Consistent with Departmental policy, the Secretary delegated to the Manager of the National NAGPRA Program the responsibility for managing the operations of the National NAGPRA Program. Likewise, the Secretary delegated to the National NAGPRA Program the responsibility for providing staff to support the Assistant Secretary for Fish and Wildlife and Parks, who has the delegated responsibility (in consultation with the Office of the Solicitor) to investigate allegations of a museum's failure to comply with the requirements of NAGPRA and assess civil penalties against museums that have failed to comply with NAGPRA. In 2005, the Department amended Part 10 to reflect the Secretary's delegations of authority to the Manager of the National NAGPRA Program and the Assistant Secretary for Fish and Wildlife and Parks (70 FR 57177, September 30, 2005). The revisions to §§ 10.12(c) and 10.12(i)(3) reflect the Secretary's delegation to the National NAGPRA Program of staffing responsibilities on civil penalties.

Comment 6: One commenter recommended that the Secretary order the Assistant Secretary for Fish and Wildlife and Parks to consult with the Assistant Secretary for Policy, Management, and Budget or the Director of the Office of Native Hawaiian Relations on regulations to carry out NAGPRA, in addition to the Assistant Secretary for Indian Affairs.

Our Response: The Secretary's discretion to order the Assistant Secretary for Fish and Wildlife and Parks to consult with the Assistant Secretary for Policy, Management, and Budget or the Director of the Office of Native Hawaiian Relations on regulations to carry out NAGPRA is beyond the scope of this rule.

Rights and Claims of Lineal Descendants in Cultural Items Excavated or Discovered on Federal or Tribal Lands After November 16, 1990

Comment 7: One commenter stated that the amendments proposed in §§ 10.5(b)(1)(i) and 10.6(a)(2) constructively diminish the rights and claims of lineal descendants to cultural items, and require a more thorough examination and discussion than the comment period allowed. The commenter thus recommended that the amendment of those sections be stayed.

Our Response: NAGPRA excludes lineal descendants from the list of possible owners of sacred objects or objects of cultural patrimony excavated or discovered on Federal or tribal lands after November 16, 1990 (25 U.S.C. 3002(a)). The current regulation at § 10.5(b)(1)(i), by contrast, includes lineal descendants among the possible owners of these two categories of cultural item when they are, or might be, excavated or discovered on Federal lands after November 16, 1990. The provision in the statute governs. The revision to § 10.5(b)(1)(i) in this rule makes the regulation consistent with the statute. NAGPRA also provides that ownership or control of human remains and associated funerary objects excavated or discovered on Federal or tribal lands after November 16, 1990 is, in the first instance, with the lineal descendants of the deceased Native American irrespective of the assertion of a claim (25 U.S.C. 3002(a)). The current regulation at § 10.6(a)(2), by contrast, makes a lineal descendant's right to control the disposition of such human remains and associated funerary objects contingent on the lineal descendant making a claim. The revision to § 10.6(a)(2) in this rule makes the regulation consistent with the statute.

Typographical Error

Comment 8: One commenter pointed out a typographical error in the spelling of "NAGPRA" in the proposed amendment of § 10.2(c)(3).

Our Response: This typographical error is corrected in the final rule.

Section 10.2(c)(1) Definition of "Secretary"

The proposed rule will amend the definition of *Secretary* to reflect Departmental delegations of the Secretary of the Interior's authority under NAGPRA.

Comment 9: One commenter stated that the Secretary could possibly delegate a single responsibility under NAGPRA to multiple designees, and thus recommended that the words "a designee" be changed to "designees."

Our Response: The rule does not expand or limit the Secretary's authority to delegate NAGPRA responsibilities. The words "a designee" mean any designee to whom the Secretary delegates any of the Secretary's responsibilities under NAGPRA.

Section 10.4(d)(1)(iii) Inadvertent Discoveries

In order to facilitate the process of consultation with known lineal descendants of a deceased Native American whose human remains and associated funerary objects were recovered from Federal or tribal lands after November 16, 1990, as required under § 10.5(b)(1)(i) of the current regulations, the rule will add such known lineal descendants to the list of parties to be notified of an inadvertent

discovery of human remains and associated funerary objects.

Comment 10: Five commenters asserted that the proposed rule suggests that a lineal descendant be notified of the inadvertent discovery of cultural items that are not human remains and associated funerary objects. Seven commenters asserted that the proposed rule implies that lineal descendants can be "culturally affiliated" with Native American human remains and funerary objects, even though cultural affiliation is a function of shared group identity and not kinship.

Our Response: The Department believes that both the current regulations and this rule are clear in requiring that the parties to be notified of an inadvertent discovery are only those who have, or are likely to have, ownership or control of the inadvertently discovered cultural items in question. NAGPRA clearly states that ownership or control in lineal descendants of cultural items recovered from Federal or tribal lands after November 16, 1990 is restricted to human remains and associated funerary objects (25 U.S.C. 3002(a)(1)); there is no requirement that lineal descendants of a deceased Native American individual be notified of the inadvertent discovery of an object belonging to any category of cultural item other than human remains and associated funerary objects. We have added text to the rule to clarify that the required notice to known lineal descendants of an inadvertent discovery is limited to human remains and associated funerary objects.

Comment 11: One commenter suggested changing the second sentence in the proposed rule from "this notification must be by telephone with written confirmation" to "this notification must be by telephone followed by written confirmation."

Our Response: This comment goes beyond the scope of this rule because there was no change proposed for that sentence.

Section 10.5(b)(1)(i) Consultation

The rule revises the subject-matter of a consultation with known lineal descendants of a deceased Native American individual when an activity on Federal lands after November 16, 1990 has resulted in, or is likely to result in, the excavation or discovery of cultural items. As NAGPRA excludes lineal descendants from the list of possible owners of sacred objects or objects of cultural patrimony excavated or discovered on Federal lands after November 16, 1990 (25 U.S.C. 3002(a)), the rule limits the scope of the required consultation with a known lineal descendant of a deceased Native American individual to human remains and associated funerary objects. Thus, the revision to § 10.5(b)(1)(i), makes the regulation consistent with the statute.

Comment 12: Seven commenters proposed retaining the language in the current regulation because not consulting with a known lineal descendant of an individual who owned a sacred object that has been recovered from Federal lands after November 16, 1990, on the disposition of such object might result in a taking of property by the United States without compensation, in violation of the Fifth Amendment of the U.S. Constitution.

Our Response: Under NAGPRA, Congress has provided that the ownership of a specific ceremonial object needed by a traditional Native American religious leader for the practice of traditional Native American religion by present-day adherents, which is recovered from Federal land after November 16, 1990, is in the Indian tribe or Native Hawaiian organization having the closest cultural affiliation with the object and stating a claim for such object (25 U.S.C. 3002(a)(2)(B)). The Department believes that, under the criteria in Executive Order 12360, this rule does not have significant takings implications.

Section 10.6(a)(2) Custody

Under NAGPRA, the right of control of the disposition of Native American human remains and associated funerary objects recovered from Federal or tribal lands after November 16, 1990, is automatically in the lineal descendants of the deceased Native American individual whenever such lineal descendants can be ascertained (25 U.S.C. 3002(a)). Such right of control is not claim-dependent. The rule eliminates the requirement in the current regulation that lineal descendants of a Native American individual, whose human remains and associated funerary objects were recovered from Federal or tribal lands after November 16, 1990, state a claim for such human remains and funerary objects. Thus, the revision to § 10.6(a)(2), makes the regulation consistent with the statute.

Comment 13: Seven commenters recommended that a provision be included to allow for the disposition to Indian tribes or Native Hawaiian organizations of human remains and associated funerary objects where a known lineal descendant declines to exercise the right of control of the disposition of the human remains and associated funerary objects of the deceased Native American.

Our Response: As noted above, NAGPRA only allows a tribe or Native Hawaiian organization to have custody over human remains and associated funerary objects of a deceased Native American if a lineal descendant cannot be ascertained. Congress did not provide for transfer of control upon failure of a lineal descendant to "exercise a right of control" and consideration of such is beyond the scope of this rulemaking.

Comment 14: Five commenters asserted that the proposed rule wrongly suggests that lineal descendants must be located concerning the ownership or control of cultural items other than the human remains and associated funerary objects of a deceased Native American.

Our Response: The rule, read together with § 10.6(a)(1) and section 3(a) of NAGPRA (25 U.S.C. 3002(a)), requires that lineal descendants be identified only with respect to the right of control of the disposition of human remains and associated funerary objects of a deceased Native American individual. We have added text to the rule to clarify that, with respect to recoveries from Federal lands, the priority of right of control of human remains and associated funerary objects defaults to a culturally affiliated Indian tribe or Native Hawaiian organization only where the lineal descendants of the deceased Native American cannot be ascertained, but that, with respect to other cultural items recovered from Federal lands, the priority of ownership is, in the first instance, in the culturally affiliated Indian tribe or Native Hawaiian organization.

Section 10.8(e) Using Summaries To Determine Affiliation

Lineal descendants of a deceased Native American whose unassociated funerary objects or individually-owned sacred object are in a museum or Federal agency collection have standing to request the repatriation of these cultural items. The rule replaces the word "individuals" used to denote such lineal descendants with the statutory term "lineal descendants."

Comment 15: Five commenters asserted that the proposed rule wrongly suggests that lineal descendants may be affiliated with objects of cultural patrimony.

Our Response: The rule merely changes the word "individuals" to "lineal descendants." Even under the current regulations, "individuals" are not eligible to be affiliated with objects of cultural patrimony. Nonetheless, we have added text to the rule to clarify that the information documented in the summary is used to determine, "as appropriate," the lineal descendants,

Indian tribes, and Native Hawaiian organizations with which the cultural items in the summary are affiliated.

Section 10.10(g)(2)(ii) The Review Committee's Responsibility for Recommending Specific Actions for Developing a Process for the Disposition of Culturally Unidentifiable Human Remains Not Now Covered by § 10.11 of These Regulations

Under NAGPRA, Congress tasked the Secretary with promulgating regulations to carry out the Act (25 U.S.C. 3011), and assigned the Review Committee the responsibility of consulting with the Secretary in the development of those regulations (25 U.S.C. 3006(c)(7)), including recommending specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains that are in the possession or control of each Federal agency and museum (25 U.S.C. 3006(c)(5)). A rule on the disposition of culturally unidentifiable human remains to Indian tribes and Native Hawaiian organizations from whose tribal or aboriginal lands the human remains were removed was promulgated in 2010, and is presently codified at 43 CFR 10.11. This rule clarifies that the Review Committee still is responsible for recommending specific actions for developing a process for the disposition of such culturally unidentifiable Native American human remains not addressed by the 2010 rule.

Comment 16: Two commenters question why, under the proposed rule, the Review Committee is charged with recommending specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains not addressed by the 2010 rule. One of these commenters recommends that the current rule at § 10.10(g) be removed entirely. The other commenter stated that there are problems inherent in § 10.11, that these problems have yet to be addressed, and that not addressing these problems has left the entire process of disposition of culturally unidentifiable human remains unresolved. The commenter urged the Review Committee not to issue further recommendations on the disposition of culturally unidentifiable human remains until these difficulties are resolved.

Our Response: Under NAGPRA, the Review Committee has the authority and the responsibility to recommend specific actions for developing a process for the disposition of any culturally unidentifiable Native American human remains that are in the possession or control of each Federal agency and museum (25 U.S.C. 3006(c)(5)). In the 2010 rule, the Secretary incorporated Review Committee recommendations with respect to the disposition of certain categories of culturally unidentifiable human remains. As for the disposition of culturally unidentifiable human remains not addressed in the 2010 rule, the Review Committee, by statute, is still responsible for recommending specific actions. Also under NAGPRA, the Secretary has the authority to assign the Review Committee any function related to any of the Review Committee's responsibilities (25 U.S.C. 3006(c)(8)), which may include recommending specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains not addressed by the 2010 rule.

Changes From the Proposed Rule

Based on the preceding comments and responses, the drafters have made the following changes to the proposed rule language:

- Section 10.2(c)(iii). We have corrected a typographical error in the spelling of "NAGPRA."
- Section 10.4(d)(1)(iii). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA and the NAGPRA term "cultural items." In addition, we have added text to clarify that the required notice to known lineal descendants of an inadvertent discovery is limited to human remains and associated funerary objects. We have also explicitly stated that such notification is to "known lineal descendants of a deceased Native American individual whose human remains and associated funerary objects were inadvertently discovered."
- Section 10.5(b)(1)(i). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA.
- Section 10.6(a)(2). We have added text to clarify that, with respect to recoveries from Federal lands, the priority of right of control of human remains and associated funerary objects defaults to a culturally affiliated Indian tribe or Native Hawaiian organization only where the lineal descendants of the deceased Native American cannot be ascertained, but that, with respect to other cultural items recovered from Federal lands, the priority of ownership is, in the first instance, in the culturally affiliated Indian tribe or Native Hawaiian organization.
- Section 10.6(a)(2)(iii)(B). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA and the NAGPRA term "cultural items."
- Section 10.8(e). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA. In addition, we have added text to clarify that the information documented in the summary is used to determine, "as appropriate", the lineal descendants, Indian tribes, and Native Hawaiian organizations with which the cultural items in the summary are affiliated.
- Section 10.10(c)(2). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA and the NAGPRA term "cultural items."
- Section 10.15(c)(1)(i). We have used, as appropriate, the specific terms for the categories of "cultural items" used in NAGPRA.

Compliance With Other Laws, Executive Orders and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives, E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. No taking of property will occur as a result of this rule.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. In accordance with the Presidential Memorandum entitled "Government to Government Relations with Native American Tribal Governments" (59 FR 22951, April 29, 1994); Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000); the President's Memorandum for the Heads of Executive Departments and Agencies on the Implementation of Executive Order 13175 (Nov. 5, 2009); and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation with Indian Tribes (Dec. 1, 2011); we have consulted with federally recognized Indian Tribes on this rule both before publication of the proposed rule and during the public comment period. Tribal comments have been addressed to ensure this rule only amends the 43 CFR part 10 regulations to correct minor inaccuracies or inconsistencies.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in 43 CFR part 10 and assigned OMB Control Number 1024–0144. This rule does not contain any new information collections that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The proposed rule and this final rule were prepared by staff of the National NAGPRA Program, National Park Service; Office of Regulations and Special Park Uses, National Park Service; and Office of the Solicitor, Division of Parks and Wildlife and Division of Indian Affairs, Department of the Interior. This final rule was prepared in consultation with the Native American Graves Protection and Repatriation Review Committee under NAGPRA (25 U.S.C. 3006(c)(7)).

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians-claims, Indians-lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority for part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*, 16 U.S.C. 470dd(2), 25 U.S.C. 9.

■ 2. Amend § 10.2 by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 10.2 Definitions.

* * * * *

(c) * * *

(1) *Secretary* means the Secretary of the Interior or a designee.

* * * * *

(3) *Manager, National NAGPRA Program* means the official of the Department of the Interior designated by the Secretary as responsible for administration of matters relating to this part. Communications to the Manager, National NAGPRA Program should be sent to the mailing address listed on the National NAGPRA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.*

* * * * *

■ 3. Amend § 10.4 by revising paragraph (d)(1)(iii) to read as follows:

§ 10.4 Inadvertent discoveries.

* * * * *

(d) * * *

(1) * * *

(iii) Notify any known lineal descendants of a deceased Native American individual whose human remains and associated funerary objects

were discovered of such discovery, and, with respect to a discovery of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, notify the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the cultural items, the Indian tribe or Native Hawaiian organization that aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization known to have a cultural relationship to the cultural items. This notification must be by telephone with written confirmation and must include information about the kinds of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, their condition, and the circumstances of their discovery;

■ 4. Amend § 10.5 by revising paragraph (b)(1)(i) to read as follows:

§ 10.5 Consultation.

* * * * *

(b) * * *

(1) * * *

(i) Any known lineal descendants of the deceased Native American individual whose human remains and associated funerary objects have been or are likely to be excavated intentionally or discovered inadvertently; and

* * * * *

■ 5. Amend § 10.6 by revising the introductory text of paragraph (a)(2) and paragraph (a)(2)(iii)(B) to read as follows:

§ 10.6 Custody.

(a) * * *

(2) When a lineal descendant of a deceased Native American individual cannot be ascertained with respect to the human remains and associated funerary objects, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

* * * * *

(iii) * * *

(B) If a preponderance of the evidence shows that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the cultural items.

* * * * *

■ 6. Amend § 10.8 by revising the introductory text of paragraph (e) to read as follows:

§ 10.8 Summaries.

* * * * *

(e) *Using summaries to determine affiliation.* Museum and Federal agency officials must document in the summary the following information. They must use this information in determining, as appropriate, the lineal descendants of a deceased Native American individual with whom unassociated funerary objects and sacred objects are affiliated, and the Indian tribes and Native Hawaiian organizations with which unassociated funerary objects, sacred objects, or objects of cultural patrimony are affiliated:

* * * * *

■ 7. Amend § 10.10 by revising paragraphs (a)(1)(ii)(B), (b)(1)(ii)(B), (c)(2), and (g) to read as follows:

§ 10.10 Repatriation.

(a) * * *

(1) * * *

(ii) * * *

(B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

(c) * * *

(2) Circumstances where there are multiple requests for repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the cultural items in question until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or

* * * * *

(g) *Culturally unidentifiable human remains.* If the cultural affiliation of human remains cannot be established under this part, the human remains must be considered culturally unidentifiable.

(1) Museum and Federal agency officials must report the inventory information regarding these human remains in their holdings to the Manager, National NAGPRA Program, who will send this information to the Review Committee.

(2) The Review Committee will:

(i) Compile an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency; and

(ii) Recommend to the Secretary specific actions for disposition of any human remains not already addressed in § 10.11.

■ 8. Amend § 10.11 by revising paragraph (b)(2)(ii) to read as follows:

§ 10.11 Disposition of culturally unidentifiable human remains.

* * * * *

(b) * * *

(2) * * *

(ii) From whose aboriginal lands the human remains and associated funerary objects were removed. Aboriginal occupation for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.

* * * * *

■ 9. Amend § 10.12 by:

■ A. Revising paragraph (c).

■ B. Revising paragraph (i)(3).

■ C. Adding introductory text to paragraph (j).

■ D. Revising paragraph (j)(1), adding introductory text to paragraph (j)(6), and revising paragraph (j)(6)(i).

■ E. Revising paragraphs (k)(1) and (k)(3).

The revisions and additions read as follows:

§ 10.12 Civil penalties.

* * * * *

(c) *How to notify the Secretary of a failure to comply.* Any person may file an allegation of failure to comply. Allegations are to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.* The allegation must be in writing, and should:

(1) Identify each provision of the Act with which there has been a failure to comply by a museum;

(2) Include facts supporting the allegation;

(3) Include evidence that the museum has possession or control of Native American cultural items; and

(4) Include evidence that the museum receives Federal funds.

* * * * *

(i) * * *

(3) *File a petition for relief.* You may file a petition for relief within 45 calendar days of receiving the notice of assessment. A petition for relief is to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGRPA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.* Your petition may ask the Secretary not to assess a penalty or to reduce the penalty amount. Your petition must:

(i) Be in writing and signed by an official authorized to sign such documents; and

(ii) Fully explain the legal or factual basis for the requested relief.

* * * * *

(j) *How you request a hearing.* You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 405 South Main Street, Suite 400, Salt Lake City, UT 84111. You must also serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice.

(1) Your request for a hearing must:

(i) Include a copy of the notice of failure to comply or the notice of assessment;

(ii) State the relief sought;

(iii) State the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment; and

(iv) State your preferred place and date for a hearing.

* * * * *

(6) *Hearing Administration.* Hearings must take place following the procedures in 43 CFR Part 4, Subparts A and B.

(i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554–557.

* * * * *

(k) * * *

(1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a Notice of Appeal. Send your Notice of Appeal to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203, within 30 calendar days of the date of the administrative law judge's decision. The notice must be accompanied by proof of service on the administrative law judge and the opposing party.

* * * * *

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203. Fees for this service are established by the director of that office.

* * * * *

■ 10. Amend § 10.13 by revising paragraph (c)(2) to read as follows:

§ 10.13 Future applicability.

* * * * *

(c) * * *

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs is published in the **Federal Register** as required by section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1 (2006)).

* * * * *

■ 11. In § 10.15, revise paragraph (c)(1) to read as follows:

§ 10.15 Limitations and remedies.

* * * * *

(c) * * *

(1) A person's administrative remedies are exhausted only when the person has filed a written claim with the responsible Federal agency and the claim has been duly denied under this part. This paragraph applies to both:

(i) Human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony subject to Subpart B of this part; and

(ii) Federal collections subject to Subpart C of this part.

* * * * *

Appendices A and B to Part 10 [Removed]

■ 12. Remove Appendices A and B to Part 10.

Dated: May 1, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–10966 Filed 5–8–13; 8:45 am]

BILLING CODE 4312–EJ–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518–3398–01]

RIN 0648–BC66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 37

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures for gray triggerfish described in Amendment 37 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) for gray triggerfish; revises the recreational accountability measures (AMs) for gray triggerfish; revises the gray triggerfish recreational bag limit; establishes a commercial trip limit for gray triggerfish; and establishes a fixed closed season for the gray triggerfish commercial and recreational sectors. Additionally, Amendment 37 modifies the gray triggerfish rebuilding plan. The purpose of Amendment 37 and this final rule is to end overfishing of gray triggerfish and help achieve optimum yield (OY) for the gray triggerfish resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective June 10, 2013 except for the amendments to §§ 622.39(a)(1)(vi) and 622.41(b) which are effective May 9, 2013.

ADDRESSES: Electronic copies of Amendment 37, which includes an environmental assessment, a regulatory flexibility act analysis (RFAA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed

under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. All gray triggerfish weights discussed in this rule are in round weight.

On January 25, 2013, NMFS published a notice of availability for Amendment 37 and requested public comment (78 FR 5404). On February 13, 2013, NMFS published a proposed rule for Amendment 37 and requested public comment (78 FR 10122). The proposed rule and Amendment 37 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

ACLs and ACTs

This rule revises the ACLs for the gray triggerfish commercial and recreational sectors. This rule also revises the ACTs for both sectors. The commercial ACT is expressed as a quota in the regulatory text.

The Council's Scientific and Statistical Committee (SSC) recommended that the gray triggerfish acceptable biological catch (ABC) be reduced to 305,300 lb (138,346 kg) from the current gray triggerfish ABC of 595,000 lb (269,887 kg). In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC (73 FR 38139, July 3, 2008), and set the ABC equal to the ACL. Applying those sector allocations to the revised ACL of 305,300 lb (138,346 kg) results in a reduced commercial ACL of 64,100 lb (29,075 kg), and a reduced recreational ACL of 241,200 lb (109,406 kg).

The Generic Annual Catch Limit Amendment developed by the Council and implemented by NMFS (76 FR 82044, December 29, 2011) established a standardized procedure to set sector-specific ACTs based on the ACLs. This procedure evaluates components that were selected to represent proxies for various sources of management uncertainty and uses a formula to determine the appropriate buffer between the ACL and ACT. The Council used this procedure for Amendment 37, which resulted in a 5 percent buffer between the commercial ACL and ACT, and a 10 percent buffer between the recreational ACL and ACT. Therefore, this final rule sets the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), and the recreational ACT at 217,100 lb (98,475 kg). The ACLs and ACTs in this rule are the same as those implemented through the temporary rule for gray triggerfish (77 FR 28308, May 14, 2012, and extended in 77 FR 67303, November 9, 2012), which remains in effect until the effective date of this final rule because this final rule replaces the measures implemented in the temporary rule.

AMs

For the commercial sector, the FMP contains both in-season and post-season AMs. The in-season AM closes the commercial sector when the commercial ACT (commercial quota) is reached or projected to be reached. Additionally, if the commercial ACL is exceeded despite the quota closure, the post-season AM reduces the following year's commercial ACT (commercial quota) by the amount of the prior-year's commercial ACL overage.

Prior to the promulgation of the temporary rule, the FMP contained no in-season AM for the recreational sector, but only a post-season AM. The recreational post-season AM provides that if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year. The temporary rule established an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached.

Consistent with the temporary rule, this final rule replaces the current post-season AM with an in-season AM for the recreational sector, and will close that sector when its ACT is reached or projected to be reached.

This rule also adds a post-season AM in the form of an overage adjustment that would apply if the recreational ACL is exceeded and gray triggerfish are overfished. This post-season AM would reduce the recreational ACL and ACT for the following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

Commercial Trip Limit

There is currently no trip limit for the commercial sector. This rule establishes a commercial trip limit for gray triggerfish of 12 fish. The trip limit applies until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Seasonal Closure of the Commercial and Recreational Sectors

This final rule establishes a seasonal closure of the gray triggerfish commercial and recreational sectors in the Gulf from June through July, each year. This fixed seasonal closure assists the rebuilding of the gray triggerfish stock by prohibiting harvest during the gray triggerfish peak spawning season. Additionally, June and July are the months that have the highest percentage of recreational landings.

Recreational Bag Limit

Gray triggerfish currently have a recreational bag limit that is part of the 20-fish aggregate reef fish bag limit. However, the aggregate recreational bag limit has no specific limit for recreational gray triggerfish landings, meaning all 20 fish harvested under the bag limit could be gray triggerfish. This final rule establishes a 2-fish gray triggerfish recreational bag limit within the 20-fish aggregate reef fish bag limit. This bag limit would apply until the recreational ACT is reached or projected to be reached during a fishing year and the recreational sector is closed.

Other Action Contained in Amendment 37

Amendment 37 revises the rebuilding plan for gray triggerfish by modifying the mortality rate and resulting time period to rebuild the gray triggerfish stock. The gray triggerfish stock is currently in the 5th year of a rebuilding plan that began in 2008. Amendment 37 modifies the rebuilding plan in response to the results from the 2011 Southeast Data, Assessment, and Review (SEDAR) stock assessment and the subsequent review and recommendations by the SSC for the gray triggerfish ABC. The modified rebuilding plan is based on a constant fishing mortality rate that does not exceed the fishing mortality rate at OY and will rebuild the stock by the end of 2017.

Comments and Responses

NMFS received nine comment letters from individuals, two submissions from non-governmental organizations, and two submissions from Federal agencies on Amendment 37 and the proposed rule. The Federal agencies indicated they had no objection to Amendment 37 or the proposed rule. Specific comments related to the actions contained in Amendment 37 and the proposed rule are summarized and responded to below.

Comment 1: The proposed combination of commercial management measures in Amendment 37 (June through July seasonal closure

and a 12-fish commercial trip limit), are not projected to constrain harvest below the commercial ACT and ACL, meaning an in-season closure will likely be necessary. A far more effective approach would be a combination of options that result in projected landings that stay below the ACT and certainly below the ACL. This would result in more predictability for commercial fishermen and reduce the risk of exceeding the ACL and compromising the rebuilding schedule.

Response: NMFS has determined that the full combination of management measures selected by the Council adequately reduces the risk of exceeding the ACL and will ensure that the rebuilding plans remains on schedule. Although the seasonal closure and trip limit, standing alone, are not projected to constrain harvest below the commercial ACT and ACL, there is an in-season AM that closes the commercial sector when it reaches or is projected to reach the ACT and there is a 5 percent buffer between the commercial ACL and ACT. This buffer addresses the uncertainty in projecting when the ACT will be reached and reduces the risk of exceeding the commercial ACL.

NMFS also determined that the Council sufficiently considered the predictability for commercial fishermen in selecting seasonal closure and trip limit. The Council reviewed 16 combinations of trips limits and seasonal closures and determined that the preferred alternatives best addressed the needs of fishermen while ensuring that the grey trigger stock continues to rebuild as scheduled. Although the projections indicate that an in-season closure will be necessary, this closure would occur in the fall, which is near the end of the fishing year.

Comment 2: The proposed recreational management measures in Amendment 37 (June through July seasonal closure and a 2-fish bag limit) result in projected recreational landings that remain below the recreational ACT, which is highly desirable because in-season recreational landings data are not as timely and accurate as commercial data, making in-season closures a less effective management tool for the recreational sector than for the commercial sector. However, a concern remains because the underlying analysis is based on an assumption that fishermen comply with the 14-inch (35.6-cm), fork length (FL), minimum size limit. In 2011, the SEDAR 9 update assessment analysis indicated that a significant portion of recreational landings were smaller than the 14-inch (35.6-cm), FL, minimum size limit over the last 3 years. Non-compliance with the minimum size limit may cause the actual reduction in landings to be less than the SEDAR model predictions, resulting in recreational landings that may exceed the ACT and ACL. The Council and NMFS should conduct outreach and education to improve compliance with the minimum size limit. However, in the meantime, NMFS and the Council should consider the proportion of undersized fish landed to avoid exceeding the gray triggerfish ACL.

Response: NMFS recognizes that prior analysis indicated that fishers are landing gray triggerfish that are smaller than the 14-inch (35.6-cm) minimum size limit and that this may cause the actual reduction in landings to be less than the SEDAR model predictions. However, in addition to the seasonal closure and bag limit, this rule will modify the recreational AMs to allow for an in-season closure if necessary. In-season recreational landings are monitored through the Marine Recreational Information Program, which incorporates information on all sizes of fish landed. Further, the closure authority is based on the recreational ACT and there is a 10 percent buffer between the ACL and ACT. This buffer addresses uncertainty in the recreational landings data that may make it more difficult to accurately project when the recreational ACT will be met and helps ensure that the recreational ACL will not be exceeded.

With regard to outreach and education to improve compliance with the minimum size limit, that confusion may exist among Gulf fishers measuring gray triggerfish because of inconsistences between state and Federal size limits. In August of 2012, NMFS and the Council developed a guidance document to provide further clarification in identifying and measuring gray triggerfish. The document was sent to all Gulf States and is also listed on the Southeast Regional Office Web site at: *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am37/documents/pdfs/gray_triggerfish_outreach.pdf*. The document includes the proper method of identifying and measuring gray triggerfish, and explains why compliance with the size limits is important.

Comment 3: Because of the urgent need to reduce gray triggerfish catch levels in order to get the rebuilding plan on track, NMFS should approve and implement Amendment 37. However, NMFS should also immediately instruct the Council that some level of discard mortality should be factored into both the catch setting and catch monitoring process for gray triggerfish.

Response: NMFS disagrees that the Council needs to factor in some level of discard mortality in the catch setting and catch monitoring process for gray triggerfish. The NMFS decision tool included a discard mortality of zero percent for Amendment 37 because, unlike many other reef fish species the Council manages, gray triggerfish are considered less susceptible to discard mortality. Previous assessments of gray triggerfish, including SEDAR 9, determined that the discard mortality rate was minimal (one to two percent) and that using this rate made little difference in the model outputs. Thus, these assessments used a zero-percent discard mortality rate when calculating stock status. For consistency, the SSC also modeled discard mortality at zero percent. However, to account for scientific uncertainty in the model, the SSC determined that a buffer should be included when setting gray triggerfish catch limits and thus, set the ABC at 305,300 lb (269,887 kg), which is 25 percent below the overfishing limit of 401,600 lb (182,163 kg) recommended by the SEDAR 9 update assessment.

Changes from the Proposed Rule

On April 17, 2013, NMFS published in the **Federal Register** an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule. Therefore, as a result of this reorganization, the gray triggerfish commercial quota regulatory text previously located at § 622.42(a)(1)(vi) is now at § 622.39(a)(1)(vi), the seasonal closure text located at § 622.34(w) is now at § 622.34(f), the commercial trip limit text located at § 622.44(g) is now at § 622.43(b), the recreational bag limit text located at § 622.39(b)(1)(v) is now at § 622.38(b)(5), and the ACL/ACT/AM text located at § 622.49(a)(2) is now at § 622.41(b).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 37 and is consistent with

the FMP, the Magnuson-Stevens Act, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the revised commercial and recreational ACLs and ACTs and the recreational sector AMs for gray triggerfish contained in this final rule at §§ 622.39(a)(1)(vi) and 622.41(b). The rest of the management measures contained in this final rule will be effective 30 days after publication in the **Federal Register**. Allowing for a 30-day delay in effectiveness of the gray triggerfish ACLs, ACTs, and recreational sector AMs would be contrary to the public interest because delaying their implementation would likely allow overfishing of gray triggerfish, resulting in more severe reductions in gray triggerfish catch levels in the future, which could have higher socioeconomic impacts on gulf reef fish fishers. A temporary rule published on May 14, 2012 (77 FR 28308) and extended on November 9, 2012 (77 FR 67303) implemented these same reduced ACLs and ACTs, and similar recreational AMs in order to end overfishing of gray triggerfish and rebuild the stock, and this final rule replaces those interim measures currently in effect. Any delay in implementing these reduced catch limits would undermine the intent of this rule, Amendment 37, and the interim measures currently in effect.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 3, 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 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (f) is added to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(f) *Seasonal closure of the commercial and recreational sectors for gray triggerfish.* The commercial and recreational sectors for gray triggerfish in or from the Gulf EEZ are closed from June 1 through July 31, each year. During the closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

■ 3. In § 622.38, paragraph (b)(5) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(5) *Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) through (b)(4) and paragraphs (b)(6) through (b)(7) of this section*—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than two fish may be gray triggerfish.

* * * * *

■ 4. In § 622.39, paragraph (a)(1)(vi) is revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(vi) Gray triggerfish—60,900 lb (27,624 kg), round weight.

* * * * *

■ 5. In § 622.41, paragraph (b) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) *Gray triggerfish*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL and ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(2) *Recreational sector.* (i) Without regard to overfished status, if gray triggerfish recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACT specified in paragraph (b)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) In addition to the measures specified in paragraphs (b)(2)(i) of this section, if gray triggerfish recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (b)(2)(iii) of this section, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

■ 6. In § 622.43, paragraph (b) is added to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(b) *Gray triggerfish.* Until the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi) is reached—12 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

[FR Doc. 2013–11072 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121129661–3389–02]

RIN 0648–BC81

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework Adjustment 24 and Framework Adjustment 49

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

ACTION: Final rule.

SUMMARY: This action approves and implements Framework Adjustment 24 to the Atlantic Sea Scallop Fishery Management Plan (Framework 24) and Framework Adjustment 49 to the Northeast Multispecies Fishery Management Plan (Framework 49), which the New England Fishery Management Council (Council) adopted and submitted to NMFS for approval. Framework 24 sets specifications for the Atlantic sea scallop fishery for the 2013 fishing year, including days-at-sea allocations, individual fishing quotas, and sea scallop access area trip allocations. This action also sets default fishing year 2014 specifications, in case the New England Fishery Management Council delays the development of the next framework, resulting in implementation after the March 1, 2014, start of the 2014 fishing year, and transitional measures are needed. In addition, Framework 24 adjusts the Georges Bank scallop access area seasonal closure schedules, and because that changes exemptions to areas closed to fishing specified in the Northeast Multispecies Fishery Management Plan, Framework 24 must be a joint action with that plan (Framework 49). Framework 24 also continues the closures of the Delmarva and Elephant Trunk scallop access areas, refines the management of yellowtail flounder accountability measures in the scallop fishery, makes adjustments to the industry-funded observer program, and provides more flexibility in the management of the individual fishing quota program.

DATES: Effective May 20, 2013, except for the amendment to § 648.58(b), which is effective May 9, 2013.

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the action and other considered alternatives, and provides a thorough analysis of the impacts of these final measures and alternatives. Copies of the Joint Frameworks, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at *http://www.nefmc.org/scallops/index.html*.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the Internet at *http://www.nero.noaa.gov/nr/*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator, at the address above, and by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The management unit of the Atlantic sea scallop fishery (scallop) ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (Scallop FMP), first established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council sets scallop fishery specifications through framework adjustments that occur annually or biennially. This action includes allocations for fishing year (FY) 2013, as well as other scallop fishery management measures.

The Council adopted Framework 24/Framework 49 on November 15, 2012, initially submitted it to NMFS on January 22, 2013, for review and approval, and submitted a revised final framework document on February 15, 2013. This action is a joint framework with the Northeast (NE) Multispecies FMP because it includes a single measure that adjusts the Georges Bank scallop access area seasonal closure schedules, thus changing exemptions to areas closed to fishing specified in the NE Multispecies FMP. However, the majority of measures contained within this action are specific to the Scallop FMP and, as such, this final rule refers to this action primarily as Framework 24, unless otherwise noted. Framework 24 specifies measures for FY 2013, but includes FY 2014 measures that will go into place as a default, should the next specifications-setting framework be delayed beyond the start of FY 2014. NMFS is implementing Framework 24 after the start of FY 2013; FY 2013 default measures have been in place since March 1, 2013. Because some of the FY 2013 default allocations are higher than what are set under Framework 24, the Council included "payback" measures, which are identified and described below, to address unintended consequences of the late implementation of this action. This action includes some measures that are not explicitly in Framework 24, but NMFS is approving them under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. These measures, which are identified and described below, are necessary to address unintended consequences of late implementation of this action, as well as to clarify implied measures that may not have been explicitly included in Framework 24. The Council reviewed Framework 24 proposed rule regulations as drafted by NMFS, and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. The proposed rule for Framework 24 published in the **Federal Register** on March 15, 2013 (78 FR 16574), with a 15-day public comment period that ended April 1, 2013. NMFS received eight comments on the proposed measures.

The final Framework 24 management measures are described below. NMFS presented details concerning the Council's development of and rationale for these measures in the preamble of

the proposed rule and they are not repeated here.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Set-asides for FY 2013 and Default Specifications for FY 2014

The Council sets the OFL based on a fishing mortality rate (F) of 0.38, equivalent to the F threshold updated through the most recent scallop stock assessment. The Council sets the ABC and the equivalent total ACL for each FY based on an F of 0.32, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs for FYs 2013 and 2014 of 46.3 M lb (21,004 mt) and 52.2 M lb (23,697 mt), respectively, after accounting for discards and incidental mortality. The SSC will reevaluate an ABC for FY 2014 in conjunction with the next biennial framework adjustment.

Table 1 outlines the various scallop fishery catch limits that are derived from these ABC values. After deducting the incidental target total allowable catch (TAC) and the research and observer set-asides, the Council proportions the remaining ACL available to the fishery according to Amendment 11 to the Scallop FMP (Amendment 11; 72 FR 20090; April 14, 2008) fleet allocations, with 94.5 percent allocated to the limited access (LA) scallop fleet (i.e., the larger "trip boat" fleet), 5 percent allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (i.e., the smaller "day boat" fleet), and the remaining 0.5 percent allocated to LA scallop vessels that also have LAGC IFQ permits. These separate ACLs and their corresponding ACTs are referred to as sub-ACLs and sub-ACTs, respectively, throughout this action. Amendment 15 (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC sub-ACLs, meaning that the LAGC sub-ACL would equal the LAGC sub-ACT. As a result, the LAGC sub-ACL values in Table 1, based on an F of 0.32, represent the amount of catch from which IFQ percent shares will be applied to calculate each vessel's IFQ for a given FY. The sub-ACLs/ACTs for FYs 2013 and 2014 (default) do not include LAGC IFQ carryover, and NMFS recommends that the Council revisit its LAGC IFQ carryover policy and see what effect carryover has had on the IFQ fishery and if adjustments are necessary. NMFS believes it may be appropriate to consider a buffer between the LAGC sub-ACLs and sub-ACTs to incorporate annual carryover, similar to how the LA fishery's buffer operates. In FY 2011, the scallop fishery did not exceed its ABC/ACL. NMFS has not finished tallying the final FY 2012 landings, but based on data to date, NMFS does not expect that the scallop fishery exceeded its FY 2012 ABC/ACL.

For the LA fleet, the Council set a management uncertainty buffer based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which results in an F of 0.28.

TABLE 1—SCALLOP CATCH LIMITS FOR FYS 2013 AND 2014 FOR BOTH THE LA AND LAGC IFQ FLEETS

	2013	2014
OFL	31,555 mt (69,566,867 lb)	31,110 mt (68,585,801 lb)
ABC/ACL	21,004 mt (46,305,894 lb)	23,697 mt (52,242,952 lb)
Incidental TAC	22.7 mt (50.000 lb)	22.7 mt (50,000 lb)
Research Set-Aside (RSA)	567 mt (1,250,000 lb)	567 mt (1,250,000 lb)
Observer Set-aside (1 percent of ABC/ACL)	210 mt (463,059 lb)	237 mt (522,429 lb)
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch)	19,093 mt (42,092,979 lb)	21,612 mt (47,647,385 lb)
LA sub-ACT (adjusted for management uncertainty)	15,324 mt (33,783,637 lb)	15,428 mt (34,012,918 lb)
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch)	1,010 mt (2,227,142 lb)	1,144 mt (2,521,026 lb)
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch).	101 mt (222,714 lb)	114 mt (252,103 lb)

These allocations do not account for any adjustments that NMFS would make year-to-year if annual landings exceeded the scallop fishery's ACLs, resulting in triggering accountability measures (AMs).

This action deducts 1.25 M lb (567 mt) of scallops annually for FYs 2013 and 2014 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. Currently, vessels involved with FY 2013 RSA-funded projects can harvest RSA from open areas and from the Hudson Canyon (HC) Access Area. Once this action is effective, these vessels will be able to harvest RSA from other access areas (i.e., Closed Area 1 (CA1), Closed Area 2 (CA2), and Nantucket Lightship (NLS)).

This action also removes 1 percent from the ABC and sets it aside for the industry-funded observer program to help defray the cost of carrying an observer. The observer set-aside for FYs 2013 and 2014 are 210 mt (463,059 lb) and 237 mt (522,429 lb), respectively.

Open Area Days-at-Sea (DAS) Allocations

This action implements vessel-specific DAS allocations for each of the three LA scallop DAS permit categories (i.e., full-time, part-time, and occasional) for FYs 2013 and 2014 (Table 2). FY 2014 DAS allocations are precautionary, and are set at 75 percent of what current biomass projections indicate could be allocated to each LA scallop vessel for the entire FY so as to avoid over-allocating DAS to the fleet in the event that the framework that would set those allocations, if delayed past the

start of FY 2014, estimates that DAS should be less than currently projected.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2013 AND 2014

Permit category	FY 2013	FY 2014
Full-Time	33	23
Part-Time	13	9
Occasional	3	2

Upon implementation of this action, the DAS allocations for full-time, part-time, and occasional vessels will increase from the allocations set at the start of FY 2013 (i.e., 26, 11, and 3 DAS, respectively), to the values assigned in Table 2.

LA Trip Allocations, the Random Allocation Process, and Possession Limits for Scallop Access Areas

Framework 24 closes both the Elephant Trunk (ET) area and the Delmarva Access Area (DMV) for FYs 2013 and 2014, continuing the current closures of these areas implemented through MSA emergency actions (77 FR 64915 (October 24, 2012) and 77 FR 73957 (December 12, 2012)). By closing the ET, this action effectively re-establishes the ET as a scallop access area for future controlled access.

For FY 2013, full-time LA vessels will receive two 13,000-lb (5,897-kg) access area trips. Each of these trips will take place in one of two access areas available for fishing (e.g., HC, NLS, CA1, and CA2), although the specific areas to which each vessel will have access will differ (Table 3).

TABLE 3—TOTAL NUMBER OF FY 2013 FULL-TIME TRIPS BY ACCESS AREA

Access area	Number of full-time vessel trips
HC	210
DMV	0
ET	0
CA1	118
CA2	182
NLS	116
Total	*626

*There are a total of 313 full-time vessels and each vessel will receive 2 trips.

Part-time vessels will receive one FY 2013 access area trip allocation in FY 2013 equivalent to 10,400 lb (4,717 kg), and vessels with limited access occasional permits will receive one 2,080-lb (943-kg) trip. These trips can be taken in any single access area that is open to the fishery for FY 2013 (i.e., all areas, except ET and DMV).

In order to preserve appropriate access area allocations, there will be no access area trips allocated under FY 2014 default measures. The next framework that would replace these FY 2014 default measures (i.e., Framework 25) would include the FY 2014 access area allocations based on updated scallop projections. If Framework 25 is delayed past March 1, 2014, scallop vessels would be restricted to fishing in open areas until final FY 2014 specifications are implemented. However, vessels would be able to fish FY 2013 compensation trips in the access areas that were open in FY 2013 (e.g., HC, NLS, CA1, and CA2) for the first 60 days that those areas are open in FY 2014, or until Framework 25 is approved and implemented, whichever occurs first. Although the Council did not consider this detail in how FY 2013 compensation trips carried over into FY 2014 would be handled, NMFS specifies the measure under section 305(d) authority of the MSA to provide some level of flexibility to vessel owners at the start of FY 2014.

In order to avoid allocating trips into access areas with scallop biomass levels not large enough to support a full trip by all 313 LA full-time vessels, Framework 24 allocates "split-fleet" trips into certain access areas. Framework 24 randomly allocates two trips to each full-time vessel so that no full-time vessel has more than one trip in a given access area. In order to facilitate trading trips between vessels, NMFS has already specified the Framework 24 access area trip allocations for full-time vessels. These allocations are listed in Section 2.1.3 of the Framework 24 document (see **ADDRESSES**), as well as NMFS's Web site. NMFS will update these preliminary allocations, with any changes in vessel ownership and/or vessel replacements prior to the effective date of this action.

Because these measures will be implemented after March 1, 2013, and the FY 2013 default access area allocations are inconsistent with Framework 24 allocations, it is possible that during the interim between the start of FY 2013 and the implementation of the proposed measures, a scallop vessel could take too many access area trips and/or land too many pounds of scallops. For example, when Framework 22 set the FY 2013 default allocations, it projected that more scallop biomass would be available to harvest than updated estimates indicate. As a result, the FY 2013 default access area allocations allow for a full-time vessel fish four access area trips at 18,000 lb (8,165 kg) a trip. Although vessels have not been able to fish all four access area trips prior to Framework 24's implementation because the Georges Bank access areas (i.e., CA1, CA2, and NLS) will not open until Framework 24 becomes effective, full-time vessels could fish one or two trips in HC. All full-time vessels have one HC trip, and half the full-time fleet has an additional HC trip under current measures. If all full-time vessels took their assigned HC trips prior to the implementation of Framework 24, up to 8.44 M lb (3,829 mt) of scallops could be harvested from HC, which is 5.71 M lb (2,591 mt) more than Framework 24 intends to remove from that area. Because HC has a large number of small scallops in the area, such a dramatic and unintended increase in fishing mortality in that area could have very negative impacts on the scallop resource and the future fishery. To avoid this overharvest and to prevent a FY 2013 ACL overage due to this discrepancy, the Council developed a "payback" measure for vessels that fish default FY 2013 allocations before Framework 24 is implemented to replace those measures. Specifically, if a vessel takes FY 2013 access area trips authorized by Framework 22, it will have to give up all FY 2013 access area trips authorized to that vessel under Framework 24, plus 12 FY 2013 open area DAS. However, vessels that take trips into HC at reduced possession limits (i.e., 13,000 lb; 5,897 kg) that are ultimately allocated those trips through Framework 24 will not be penalized if the trips are made before implementation of Framework 24. Examples on how these payback measures would be applied are available in the preamble to the proposed rule. NMFS has notified all limited access scallop permit holders of these potential payback provisions.

Although the Council did not discuss the payback measures for part-time and occasional vessels, there is still be the potential for those vessels to fish more scallops from HC than allocated under Framework 24. To make measures consistent with the full-time HC payback measures, NMFS specifies, under its MSA section 305(d) authority, similar payback measures for part-time and occasional vessels that are proportional to those specified by the Council for full-time vessels.

At the start of FY 2013 under default measures, part-time and occasional vessels have been allocated two trips at 14,400 lb (6,532 kg) and one trip at 6,000 lb (2,722 kg), respectively. These trips can be taken in any open area, and it is possible that some vessels may choose to take all their access area trips in HC at the start of the FY, rather than

wait for Framework 24's implementation, which allocates one trip at 10,400 lb (4.717 kg) for part-time vessels and one trip at 2,080 lb (943 kg) for occasional vessels. If vessels choose to take a trip(s) into HC above their ultimate trip and possession limit specified under Framework 24, they will receive a reduced DAS allocation once Framework 24 is implemented. Proportionally similar to what is set for full-time vessels, part-time vessels would receive 5 fewer DAS (i.e., total FY 2013 allocation of 8 DAS, rather than 13 DAS) and occasional vessels would receive 1 less DAS (i.e., total FY 2013 allocation of 2 DAS, rather than 3 DAS).

This payback measure does not apply to carryover HC trips from FY 2012 (i.e., trips broken during the last 60 days of FY 2012).

This action also removes the measures that limit fishing effort in the Mid-Atlantic during times when sea turtle distribution overlaps with scallop fishing activity. As a result of the updated Biological Opinion, which includes updated reasonable and prudent measures, the Council is no longer required to develop those effort limitation measures through the specification-setting frameworks. Once Framework 24 is effective, the access area effort-limitation measures specified in Framework 22 will cease to exist.

LAGC Measures

1. *Sub-ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action sets a 2,227,142-lb (1,010-mt) ACL for FY 2013 and an initial ACL of 2,521,026 lb (1,144 mt) for FY 2014 (Table 1). NMFS calculates IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY would be deducted by the amount of the overage. Because Framework 24 will not go into effect until after the March 1 start of FY 2013, the default FY 2013 IFQ allocations, which are higher than those specified in Framework 24, have rolled over until Framework 24 is implemented. It is possible that scallop vessels could exceed their Framework 24 IFQ allocations during this interim period between March 1, 2013, and NMFS's implementation of the IFQ allocations in Framework 24. Therefore, Framework 24 specifies the following payback measure for LAGC IFQ vessels: If a vessel transfers (i.e., temporary lease or permanent transfer) all of its allocation to other vessels prior to Framework 24's implementation (i.e., transfers more than it is ultimately allocated for FY 2013), the vessel(s) that transferred in the pounds will receive a pound-for-pound deduction in FY 2013 (not the vessel that leased out the IFQ). In situations where a vessel leases out its IFQ to multiple vessels, only the vessel(s) that, in turn, leased in quota resulting in an overage would have to pay back that quota. A vessel that incurs such an overage can either lease in more quota to make up for that overage during FY 2013, or will have that overage, along with any other overages incurred in FY 2013, applied against its FY 2014 IFQ allocation as part of the individual AM applied to the LAGC IFQ fleet. Examples on how these payback measures would be applied are available in the preamble to the proposed rule. As with the limited access scallop permit holders, LAGC permit holders have been notified of these potential payback provisions.

The onus is on the vessel owners to have a business plan to account for the mid-year adjustments in lieu of these payback measures. Prior to the start of FY 2013, NMFS sent a letter to IFQ permit holders providing both March 1, 2013, IFQ allocations and Framework 24 IFQ allocations so that vessel owners would know how much they could lease to avoid any overages incurred through leasing full allocations prior to the implementation of Framework 24.

2. *Sub-ACL for LA scallop vessels with IFQ permits.* For LA scallop vessels with IFQ permits, this action sets a 222,714-lb (101-mt) ACL for FY 2013 and an initial 252,103-lb (114-mt) ACL for FY 2014 (Table 1). NMFS calculates IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY would be reduced by the amount of the overage.

If a vessel fishes all of the scallop IFQ it receives at the start of FY 2013, it would incur a pound-for-pound overage that would be applied against its FY 2014 IFQ allocation, along with any other overages incurred in FY 2013, as part of the individual AM applied to the LA vessels with LAGC IFQ permits. These vessels cannot participate in the IFQ transfer program, so leasing quota is not an option.

3. *LAGC IFQ trip allocations and possession limits for scallop access areas.* Table 4 outlines the total number of FY 2013 LAGC IFQ fleetwide access area trips. Once the total number of trips is projected to be fished, NMFS will close that access area to LAGC IFQ vessels for the remainder of FY 2013.

TABLE 4—LAGC FLEET-WIDE ACCESS AREA TRIP ALLOCATIONS FOR FY 2013

Access area	FY 2013
CA1	212
CA2	0
NLS	206
HC	317
ETA	0
DMV	0

In previous years, the Council did not allocate trips for LAGC IFQ vessels into CA2, because the Council and NMFS do not expect many of these vessels to fish in that area due to its distance from shore, and the total number of fleetwide trips only reflected 5.5 percent of each open access area. The Council specified in Framework 24 that 5.5 percent of the CA2 available TAC will be included in setting LAGC IFQ fleetwide access area trip allocations, essentially shifting those CA2 trips to other access areas closer to shore, so that LAGC IFQ vessels have the opportunity to harvest up to 5.5 percent of the overall access area TAC, not just that available in areas open to them. As a result, because the LAGC fishery could have been allocated 217 trips in CA2 in FY 2013 (i.e., 5.5 percent of CA2's TAC), those trips are divided equally among the other access areas, adding about 72 additional trips per area.

In order to preserve appropriate access area allocations, there will be no access area trips allocated to LAGC IFQ vessels under FY 2014 default measures. The next framework that would replace these FY 2014 default measures (i.e., Framework 25) would include the FY 2014 access area allocations based on updated scallop projections. If Framework 25 is delayed past March 1, 2014, LAGC IFQ scallop vessels will be restricted to fishing their IFQ allocations in open areas until final FY 2014 specifications are implemented.

4. *NGOM TAC.* This action sets a 70,000-lb (31,751-kg) annual NGOM TAC for FYs 2013 and 2014. The allocation for FY 2014 assumes that there are no overages in FY 2013, which would trigger a pound-for-pound deduction in FY 2014 to account for the overage.

5. *Scallop incidental catch target TAC.* This action sets a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FYs 2013 and 2014 to account for mortality from this component of the fishery, and to ensure that F-targets are not exceeded.

Adjustments to Georges Bank (GB) Access Area Closure Schedules

Framework 24 adjusts the time of year when scallop vessels may fish in the GB access areas (CA1, CA2, and NLS). Because this changes exemptions to areas closed to fishing specified in the NE Multispecies FMP, this action is also a joint framework with that plan (Framework 49 to the NE Multispecies FMP). To date, vessels may fish in the areas from June 15 through January 31 and are prohibited from fishing in these areas from February 1 through June 14 of each FY. Framework 24 moves the CA2 closure to August 15–November 15, and eliminates the seasonal closures from CA1 and NLS. Once Framework 24 is effective, all access areas will open.

Addition of LAGC Yellowtail Flounder (YTF) Accountability Measures (AMs)

This action requires AMs for the LAGC fishery, one for the LAGC dredge fishery and the other for the LAGC trawl fishery in the Southern New England/Mid-Atlantic (SNE/MA) YTF stock area. To date, the LAGC fishery does not have associated AMs for any overages to the YTF sub-ACLs, but the fleet is catching more YTF in the Southern New England/Mid-Atlantic (SNE/MA) YTF stock area than previously expected. The Council did not specify AMs for LAGC vessels in the GB YTF stock area because catch of YTF by these vessels is negligible.

For LAGC vessels that use dredges, if the SNE/MA YTF sub-ACL is exceeded and an AM is triggered for the LA scallop fishery, the LAGC dredge fishery will not have an AM triggered unless their estimated catch is more than 3 percent of the SNE/MA sub-ACL by the scallop fishery. AMs in SNE/MA will not trigger on this fishery if dredge vessels exceed 3 percent of the SNE/MA sub-ACL unless the total SNE/MA sub-ACL and SNE/MA ACL are exceeded. For example, if the total SNE/MA sub-ACL for the scallop fishery is 50 mt (110,231 lb) of YTF, and NMFS estimates that the LAGC dredge fishery will catch 1 mt (2,205 lb) of YTF, 2 percent of the SNE/MA sub-ACL, AMs will not trigger for this fleet even if the total SNE/MA sub-ACL was exceeded and LA AMs were triggered. However, if the catch is more than 3 percent of the SNE/MA YTF sub-ACL (i.e., 1.5 mt (3,307 lb) of YTF), and both the overall scallop fishery's YTF sub-ACL and the YTF LA AM is triggered, an AM will also trigger for the LAGC dredge fishery. The Council designed this threshold as a way to relieve the LAGC dredge fishery from AMs if they are triggered for LA vessels, since the YTF catch from the LAGC dredge segment of the fishery is such a small percentage of the total.

The AM closure area for LAGC dredge vessels is identical to that currently in place for the LA fishery (statistical areas 537, 539, and 613), but the closure schedule (based on the level of the YTF SNE/MA sub-ACL overage) differs. The Council developed a closure schedule that leaves some of the AM area open for parts of the year when traditional LAGC dredge fishing has occurred, but closes the areas during months when YTF bycatch is higher (Table 5).

TABLE 5—LAGC DREDGE FISHERY'S AM CLOSURE SCHEDULE FOR STATISTICAL AREAS 537, 539, AND 613

Overage	AM closure area and duration		
	539	537	613
2 percent or less	Mar–Apr	Mar–Apr	Mar–Apr.
2.1–7 percent	Mar–May, Feb	Mar–May, Feb	Mar–May, Feb.
7.1–12 percent	Mar–May, Dec–Feb	Mar–May, Dec–Feb	Mar–May, Feb.
12.1–16 percent	Mar–Jun, Nov–Feb	Mar–Jun, Nov–Feb	Mar–May, Feb.
16.1 percent or greater	All year	Mar–Jun, Nov–Feb	Mar–May, Feb.

For LAGC trawl vessels, the AM closure areas are statistical areas 612 and 613. The Council specified that the SNE/MA YTF AM for LAGC trawl vessels will trigger two different ways:

First, the AM will trigger if the estimated catch of SNE/MA YTF by the LAGC trawl fishery is more than 10 percent of the SNE/MA YTF sub-ACL for the scallop fishery. In this case, the AM closure season for LAGC trawl vessels will be March–June and again from December–February, a total of 7 months (i.e., the most restrictive closure in Table 6 below). For example, if the total scallop fishery SNE/MA YTF sub-ACL was 50 mt (2,205 lb), AMs will trigger for the LAGC trawl fishery if the estimated catch by that segment is more than 5 mt (11,023 lb), 10 percent of the SNE/MA YTF sub-ACL for the scallop fishery for that FY. Because the LAGC trawl fishery will meet the 10-percent threshold, based on the example above, the AM will be a 7-month closure of statistical areas 612 and 613, regardless of whether or not the scallop fishery's SNE/MA YTF sub-ACL was triggered. This measure is more restrictive than what the Council specified for LAGC dredge vessels, because the LAGC trawl fishery is catching much more SNE/MA YTF than anticipated (i.e., in FY 2012, NMFS estimated that the LAGC trawl fishery caught 22.5 percent of the total SNE/MA YTF sub-ACL, and the LAGC dredge fishery only caught 1.5 percent).

Second, if the scallop fishery exceeds its SNE/MA sub-ACL overall, and total SNE/MA YTF ACL is exceeded, triggering AMs in the LA fleet, LAGC trawl vessels will be subject to their AM closure, with the length of the closure based on the extent of the YTF SNE/MA sub-ACL overage of the entire scallop fishery (See Table 6). Continuing the example above, if the scallop fishery exceeds its 50-mt YTF SNE/MA sub-ACL and the LA AM is triggered, and the LAGC trawl portion of the scallop fishery catches an estimated 2 mt (i.e., less than the 10-percent threshold), LAGC vessels will be prohibited from using trawl gear in statistical areas 612 and 613 from March through April of a following FY, based on Table 6 (See the "Modification to the Timing of YTF AM Implementation" section below for more information on when AMs will be triggered for the scallop fishery overall).

If both of these caveats are triggered (i.e., the trawl fishery catches more than 10 percent of the total SNE/MA YTF sub-ACL *and* the overall SNE/MA YTF sub-ACL is exceeded, triggering AMs for the LA scallop fishery), the most restrictive AM applies (i.e., the 7-month closure from March–June, and December–February).

In order to reduce the economic impacts on this fleet, vessels may fish in the AM area during the months of July through November to enable LAGC trawl vessels to fish for scallops in that area during part of the year that they have historically fished (i.e., summer and fall). In addition, if the LAGC trawl AM is triggered, a trawl vessel could still covert to dredge gear and continue fishing for scallops. If a vessel chooses to switch gears, it must follow all dredge gear regulations, including that fishery's

AM schedule if it has also been triggered.

TABLE 6—LAGC TRAWL FISHERY'S AM CLOSURE SCHEDULE FOR STATISTICAL AREAS 612 AND 613

Overage	AM Closure
2 percent or less	Mar–Apr.
2.1–3 percent	Mar–Apr, and Feb.
3.1–7 percent	Mar–May, and Feb.
7.1–9 percent	Mar–May, and Jan-Feb.
9.1–12 percent	Mar–May, and Dec–Feb.
12.1or greater	Mar–June, and Dec–Feb.

Modification to the Timing of YTF AM Implementation

Under current regulations, on or about January 15 of each FY, NMFS determines whether the scallop fishery is expected to exceed the YTF flounder sub-ACLs for that FY. This determination is based on a projection that includes assumptions of expected scallop catch for the remainder of the FY, as well as YTF bycatch rates from the previous year's observer data if those data for the current FY are not available. Before the start of the next FY, NMFS announces if AMs are triggered, based on the January projection, and predefined areas close to the limited access scallop fishery based on the AM schedule in Framework 23 (77 FR 20728; April 6, 2012) and the AM trigger thresholds outlined in Framework 47 to the NE Multispecies FMP (Groundfish Framework 47) (77 FR 26104; May 2, 2012). Once all the data are available for the previous year (i.e., full FY scallop landings, full FY observer data), NMFS re-estimates YTF catch and, if the new estimate shows a different conclusion when compared to the sub-ACLs than the initial projection, could re-evaluate the decision to trigger AMs.

Because NMFS must determine whether or not the total YTF ACL has been exceeded before the end of the NE multispecies FY (April 30) when information on YTF catch is fully available, the preliminary determination to trigger an AM may be problematic. Moreover, administering this YTF AM is extremely complex and has resulted in continuously re-evaluating the AM determination, depending on data variability.

To streamline the process of implementing YTF AMs in the scallop fishery, and to alleviate industry confusion caused by preliminary determinations of the need to trigger an AM, Framework 24 specifies that the respective AM for each YTF stock area will be implemented at the start of the next FY (i.e., the current way YTF AMs are to be triggered) only if reliable information is available that a YTF sub-ACL has been exceeded during a FY. This approach could be used in situations where the ACL for a stock is low, an overage is known early in the FY, and AM determinations are based on actual catch and landings rather than projections.

However, if reliable information is not available to make a mid-year determination of the need to implement an AM for the YTF sub-ACL, NMFS must wait until enough information is available (i.e., when the total observer and catch data is available for that FY for both the groundfish and scallop fisheries) before making a decision to implement an AM. Under this scenario, the AMs will be implemented in Year 3 (e.g., for an overage in FY 2013, the AM will be implemented in FY 2015).

Additional Flexibility for the LAGC IFQ Leasing Program

At the request of the LAGC IFQ fleet, the Council developed measures that provide more flexibility to the LAGC IFQ leasing program by allowing transfer of quota after an LAGC IFQ vessel landed scallops in a given FY and will allow IFQ to be transferred more than once, or "re-transferred". In the proposed rule, NMFS referred to subsequent transfers as "sub-transfers", but NMFS determined that the term "re-transfer" better describes the process. These provisions do not apply to vessels that have both an LAGC IFQ and LA scallop permit. Those vessels are prohibited from leasing or permanently transferring LAGC IFQ.

Currently, an IFQ vessel is not allowed to transfer IFQ to another vessel for the remainder of a FY if it has already landed part of its scallop IFQ for that year. This restriction was part of the original design of the scallop IFQ program implemented through Amendment 11. At the time, because the IFQ program was new, Amendment 11 limited the IFQ transfer program this way in order to avoid potential administrative mistakes related to the accounting of IFQ scallop landings. Because the Council has determined that this restriction unnecessarily hinders flexibility in the LAGC fishery, this action removes this prohibition, allowing a vessel to utilize its IFQ throughout the FY. For example, if an IFQ vessel that has a base allocation of 10,000 lb (4,536 kg) only lands 2,000 lb (907 kg) before deciding to stop fishing for scallops for the remainder of the year, the vessel will now be able to transfer (temporarily or permanently) its remaining 8,000 lb (3,629 kg) of scallops to other IFQ vessels during the FY. NMFS will implement this provision along with other Framework 24 measures upon this action's effective date.

Currently, IFQ can only be transferred once during a FY, a restriction that was also part of the original design of the scallop IFQ program implemented through Amendment 11. For similar reasons as those stated above, Amendment 11 limited the IFQ transfer program this way in order to avoid too much complexity and potential administrative mistakes related to multiple transfers to and from multiple vessels. This action changes that restriction by enabling an IFQ vessel to re-transfer IFQ that it received through a previous transfer to another IFQ vessel or vessels during the same fishing year to allow for more flexibility in managing IFQs.

Because re-transfers will add more complexity to IFQ monitoring, and because NMFS is currently making a number of programming changes to the databases to improve monitoring in this fishery, NMFS cannot make the full suite of necessary changes upon the effective date of the final rule. Instead, NMFS will implement this re-transfer allowance in two stages. Upon the effective date of this final rule, vessels will be able to permanently transfer in IFQ and then temporarily re-transfer (i.e., lease out) that IFQ to another vessel(s) within the same fishing year. The proposed rule proposed to delay implementation of this provision for a year to allow time for programming changes to account for these transfers. Upon further consideration, however, because this is a relatively minor adjustment to how NMFS monitors the fishery, and does not involve extensive programming changes, NMFS is able to implement this portion of the measure along with other Framework 24 measures upon this action's effective date. Starting March 1, 2014, following the completion of other programming adjustments, vessels will also be able to re-transfer IFQ, both permanently and temporarily, that they obtained through a permanent or temporary transfer in the same fishing year There is no limit on the number of times an IFQ may re-transferred in a given FY.

In order to process IFQ re-transfer applications, NMFS requires that both parties involved in a re-transferring request (i.e., the transferor and the transferee) must be up-to-date with their data reporting (i.e., all VMS catch reports, VTR, and dealer data must be up-to-date).

Because this action increases the complexity of NMFS IFQ monitoring, cost recovery fees will likely increase.

This action also requires adjustments to how NMFS applies scallop IFQ towards the ownership and vessel caps, which are held at 5 percent and 2.5 percent of the total LAGC IFQ sub-ACLs, respectively. Re-transfers complicate the ownership/vessel cap accounting, requiring stronger controls. To ensure accurate accounting and to avoid the potential for abuse of the IFQ cap restriction, all pounds that have been on a vessel during a given FY will be counted towards ownership or vessel caps, no matter how long the pounds were "on" the vessel (i.e., even if a vessel leases in 100 lb (45.4 kg) and transfers out those pounds 2 days later, those 100 lb (45.4 kg) will count towards the caps).

For example, Owner A has an IFQ permit on Vessel 1 with an allocation consisting of 2.5 percent of the total IFQ allocation and also has a permit on Vessel 2 with an allocation of 2.0 percent, for a total of 4.5 percent ownership of the total IFQ allocation. If Owner A leases an additional 0.5 percent to Vessel 2 and then re-leases that 0.5 percent to another vessel owned by a separate entity (Owner B), because those pounds were under the ownership of Owner A at one point during the given FY, he will still have reached his ownership cap, as well as the vessel caps for both vessels. As such, Owner A could continue to lease out (or permanently transfer) IFQ pounds to other owners, but could not transfer in any more IFQ until the next FY.

Modifications to the Observer Set-Aside Program

1. *Inclusion of LAGC open area trips into the industry-funded observer set-aside program.* Framework 24 expands the observer set-aside (OBS) program to include LAGC IFQ vessels in open areas in order to increase the amount of coverage of that fleet compared to current levels. Currently, if an LAGC IFQ vessel is required to carry an observer on an open area trip (i.e., a non-access area trip), NMFS covers the cost of that observer. All other scallop trips (LAGC trips in access areas, and LA trips in both open and access areas) are under the industry-funded scallop OBS program. Under the industry-funded OBS program, if a vessel is selected to carry an observer, the vessel is responsible to pay for that observer on that trip. The vessel is compensated from the OBS program in either additional pounds in access areas or DAS in open areas to help defray the cost of the observer.

In order to incorporate LAGC open area trips into the OBS Program, Framework 24 specifies that LAGC vessels will be compensated in a manner similar to how access area IFQ trips are handled: If an IFQ vessel is selected for an open area observed trip, that vessel will receive compensation of a certain number of pounds per trip. The exact compensation rate is determined by NMFS at the start of each FY. For the remainder of FY 2013, the compensation rate for LAGC open area IFQ trips will be 150 lb/trip (68 kg/trip), resulting in a coverage rate for LAGC open area trips of about 8 percent. If a vessel is selected for an open area trip, that vessel will receive a credit of 150 lb (68 kg) towards its IFQ account to account for the observer coverage, so long as the OBS set-aside has not been fully harvested. Those additional pounds can be fished on the observed IFQ trip above the regular possession limit, or can be fished on a subsequent trip that FY (but must be harvested within the current possession limit requirements if fished on a future trip).

The LAGC call-in requirements for open area trips are identical to those currently in place for LAGC IFQ access area trips: All LAGC vessels are required to call in to NMFS's Northeast Fisheries Observer Program weekly with their expected trip usage: Vessel operators must call by Thursday if they expect to make any open area (or access area) trips from Sunday through Saturday of the following week. Observer providers should charge LAGC IFQ vessels on open area trips in the same way that they charge LAGC access area trips: Providers should charge dock-to-dock, where a "day" is considered a 24-hr period, and portions of other days should be pro-rated at an hourly charge.

2. *Adjustments to applying the OBS TAC by area.* Framework 24 adjusts how the OBS is allocated (i.e., removing the need for it to be area-specific), in order to allow for more flexibility in adjusting compensation rates by area mid-year. One-percent of the total ACL for the scallop fishery is set aside annually to help compensate vessels for the cost of carrying an observer, and currently this amount is divided proportionally into access areas and open areas in order to set the compensation and coverage rates and monitor this set-aside harvest by area. These area-specific OBS allocations are then set in the regulations, along with all other specifications set through the framework process. If the set-aside for a given area is fully harvested, based on the TACs in the regulations, there is currently no mechanism to transfer OBS TAC from one area to another and, as a result, any vessel with an observed trip in an area with no remaining OBS has to pay for the observer without compensation. Under the Framework 24 measure, although the specification-setting frameworks would still divide up the OBS proportionally by access and open areas in order to set the compensation and coverage rates and for monitoring purposes (i.e., in order to determine if fishing activity in one area is using up more of the set-aside compensation than anticipated when the compensation rate was set), these TACs will not be officially set in the regulations. Instead, set-aside can be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside will be considered completely harvested when the full 1 percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS will continue to proactively adjust compensation rates mid-year, if necessary, to minimize the chance that the set-aside will be harvested prior to the end of the FY. Allowing set-aside to be flexible by area will help reduce the chance that vessels would have to pay for observers without compensation when fishing in a given area.

Other Clarifications and Modifications

This rule includes several revisions to the regulations to address text that is duplicative and unnecessary, outdated, unclear, or which otherwise could be improved. NMFS sets these changes consistent with section 305(d) of the MSA. There are terms and cross references in the current regulations that are now inaccurate due to the regulatory adjustments made through past rulemakings (e.g., measures related to the YTF access area TACs are no longer necessary because Framework 47 to the NE Multispecies FMP removed those TACs in May 2012). NMFS revises the regulations to remove measures intended by previous rulemaking, and to provide more ease in locating these regulations by updating cross references.

This action also makes revisions that would clarify the intent of certain regulations. For example, NMFS clarifies the Turtle Deflector Dredge regulations at § 648.51 to more clearly indicate the gear requirements intended through Framework Adjustment 23 to the Scallop FMP (77 FR 20728; April 6, 2012). It came to NMFS's attention that some dredge manufacturers were building non-compliant TDDs, so the regulations were clarified to avoid

further confusion. For example, to assist with compliance, NMFS clarified where the flaring bar may be located along the dredge frame and clarified from where the 45 degree angle described at 648.51(b)(5)(ii)(*A*)(*2*) should be measured. NMFS considered comments from the Coast Guard in the final clarifications to the TDD regulations. Additionally, prohibitions in § 648.14 imply that vessels cannot land scallops up to the incidental scallop possession limit when declared out of the fishery and that IFQ vessels cannot land up to 600 lb (272 kg) of their IFQ scallops on NE multispecies, surfclam, ocean quahog, or other trip requiring a VMS declaration. This was not the intent of Amendment 11, and conflict with other regulations in part 648, subpart D. As such, NMFS clarifies these regulations. NMFS also adds more description to some access area and habitat closed area coordinates to clarify the boundaries of those areas.

Comments and Responses

NMFS received seven comment letters in response to the proposed rule from: Congressman William R. Keating, the executive director of the Community Development Partnership (CDP) of Lower Cape Cod, an organization that promotes environmental and economic sustainability for the Lower Cape region of Massachusetts; the Cape Cod Commercial Hook Fishermen's Association (CCCHFA), writing on behalf of LAG IFQ fishermen residing on Cape Cod, Massachusetts; twelve other Cape Cod LAGC IFQ fishermen; and three individuals. Two relevant issues relating to the proposed Framework 24 measures were raised; responses are provided below. NMFS may only approve, disapprove, or partially approve measures in Framework 24, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

Comment 1: One commenter stated that various FY 2014 scallop quotas should be reduced because they are too high, and suggested reductions from 3 percent to 52 percent. The commenter provided no rationale for why the selected quotas should be reduced in the manner suggested.

Response: The reasons presented by the Council and NMFS for recommending the quota allocations for FYs 2013 and 2014, which are discussed in the preambles to both the proposed and final rules, are based on the best scientific information available and are consistent with the control rules outlined in Amendment 15's ACL process. Scallops are currently not considered overfished or subject to overfishing. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents. In addition, FY 2014 quotas represent default quotas that would be reconsidered by the Council in a future framework action.

Comment 2: NMFS received comment letters from Congressman Keating, the CDP, CCCHFA, twelve IFQ LAGC fishermen, and two individuals requesting that NMFS allow for a quicker implementation of the proposed re-transfer provisions, specifically for one type of LAGC IFQ re-transfer. During the development of Framework 24 and in the Framework 24 proposed rule, NMFS stated that due to the complexity of programming to account for re-transfers during the same fishing year, NMFS would be unable to implement re-transfer procedures until March 1, 2014. These commenters requested that NMFS allow at least the re-transfer of IFQ through a lease in the same fishing year after a sale of IFQ through a permanent transfer. In addition, the commenters stated that the Council was clear in its intent to allow this provision to be effective in FY 2013.

Response: NMFS disagrees with the commenters' statements that the Council was clear in its intent to distinguish between different types of re-transfers in Framework 24 and allow for the scenario outlined above to occur in FY 2013. However, NMFS understands the request to implement as soon as possible more flexibility in the IFQ transfer program. As a result, NMFS will, upon the effective date of this action, allow a vessel to permanently transfer in IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY.

In order to ensure that NMFS can accurately monitor ownership cap restrictions and incorporate real-time landings into the IFQ transfer program, NMFS will still need more time to develop the full suite of re-transfer programming procedures. Thus, we will allow for leased IFQ to be leased again in the same FY, and allow for permanent transfers to be permanently transferred again in the same FY beginning March 1, 2014.

Changes from Proposed Rule to Final Rule

In § 648.53(h)(5), the regulations are updated to reflect NMFS's intent to allow a vessel to permanently transfer IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY, beginning with the effectiveness of this action, rather than March 1, 2014.

In § 648.51(b)(5)(ii)(A)(*3*), the words "so that it [the flaring bar] does not interfere with the space created by the bump out" have been removed, to alleviate any potential confusion.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 1312 and E.O. 12630, respectively.

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The requirement was approved by the Office of Management and Budget (OMB) under the NMFS Northeast Region Observer Providers Family of Forms (OMB Control No. 0648–0546). Under Framework 24, all LAGC IFQ vessels are required to call in weekly with their expected open area trip usage, similar to current requirements for LAGC IFQ trips in access areas. The public reporting burden for this collection of information has already been analyzed under this family of forms and is estimated to average 15 minutes per response with an associated cost of $1.50, that includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Based on FY 2011 permit data, there are 259 active LAGC IFQ-permitted scallop vessels that are subject to this information collection. These vessels are required to notify observer providers if they plan on fishing in an open area in the following week. This information collection adds a burden to a small portion of the fleet. While this is a new requirement, vessels would never be obligated to call in more than once a week. Since the 2011 renewal of this information collection already estimated the burden at once a week for all active vessels, there are no additional burden hours compared to the previous renewal.

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks

constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the majority of Framework 24 final measures effective May 20, 2013. The only exception to this would be to make the continued closure of the Delmarva access area effective May 9, 2013, in order to continue to protect small scallops.

If there is a 30-day delay in implementing the measures in Framework 24, the scallop fleet will continue under the current access area schedule, as well as access area trip, DAS, IFQ, RSA and OBS allocations.

The current access area allocations are higher than the measures in Framework 24, which were developed to reflect an updated estimate of the annual catch that can be harvested without resulting in overfishing. As a result, vessel owners and operators are likely to exceed the catch levels specified in Framework 24 for FY 2013 if the Framework 24 measures are not implemented soon. Constraining the implementation of Framework 24 by instituting a 30-day delay in effectiveness would be contrary to the public interest because continuing with these higher allocations would likely result in localized overfishing in access areas, and would negatively impact the access area rotation program, as well as future scallop allocations.

In addition, the emergency action that closed the DMV access area to protect scallop recruitment will expire by May 14, 2013. If Framework 24, which continues this closure, is not effective prior to May 14, 2013, the DMV will reopen and vessels would be able to fish trips in that area. This could also jeopardize the success of the access area program in future years by reducing the long-term biomass and economic yield from this area. FY 2012 survey results show that there are a high number of small scallops in the DMV that need to be protected from harvest in order to grow to a commercially viable size. If this area opens to scallop fishing due to a delay in implementing Framework 24 measures, these scallops would be removed from the DMV, which would result in smaller future scallop allocations and fewer economic benefits to fishery participants.

Expediting the implementation of Framework 24 measures will also have greater public benefit because enacting the DAS allocations and implementing the new GB access area seasonal closures would have positive impacts on the economics of the fishery, thereby furthering the intent of the rule. Currently, limited access vessels are fishing under lower DAS allocations than will be implemented by Framework 24. In addition, the CA1, CA2, and NLS access areas will open immediately once Framework 24 is implemented, rather than opening on June 15, 2013. Scallop vessels are limited to which access area they can fish until Framework 24 is effective and these openings will take the pressure off of vessel owners/operators from fishing their open area DAS or HC access area trips, allowing for more flexibility on when and where to fish for scallops.

NMFS was unable to incorporate the 30-day delay in effectiveness into the timeline for Framework 24 rulemaking due to the Council's February 2013 submission of Framework 24, which was only two weeks before the March 1 start of the 2013 scallop FY. However, NMFS must also considers the need of the scallop industry to have prior notice in order to make the necessary preparations to begin fishing under these finalized measures (e.g., time to notify the observer program; collect the necessary equipment and notify crew; plan for the steam time to get to an area once it opens; or return from a trip started prior to the effective date of this action, should the vessel owner/operator want to fish in a more preferable area during this time of year). For these reasons, NMFS has determined that implementing these measures with a 10-day delay in effectiveness, and immediately continuing the closure of the Delmarva access area, would have the greatest public benefit.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 24 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 24 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 24 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Because Framework 24 includes an alternative to modify the GB access area seasonal restrictions (Section 2.2.1), this action is also a joint framework with the NE Multispecies FMP (Framework 49). However, this specific alternative is not expected to have direct economic impacts to the groundfish fishery (i.e., groundfish vessels currently have no access to these areas and should that change, Framework Adjustment 48 to the NE Multispecies FMP would include a full analysis of the economic impacts for the groundfish fishery) and thus impacts of such a measure on groundfish small business entities is expected to be negligible. Therefore, this FRFA focuses on the scallop fishery.

Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Although NMFS received no public comments directly in response to the IRFA summary in the proposed rule, six more general public comments were received regarding the impacts of the LAGC IFQ transfer measures on small businesses.

Comment A: As noted above in Comment 2, several commenters requested that NMFS allow for one type of re-transfer to occur upon the effectiveness of Framework 24: Allowing for a sale of IFQ through a permanent transfer and then allowing for that IFQ to be temporarily transferred (i.e., leased) in the same FY. Commenters mentioned that their inability to re-transfer causes undue financial hardship and, although many commenters noted that they could wait until FY 2014 for the broader re-transfer program to be effective, they would appreciate the ability to at least allow for leasing after a permanent transfer (i.e., "sale" of IFQ).

Response: As noted in our responses to Comment 2, NMFS appreciates the need for LAGC IFQ fishermen to have more flexibility in the IFQ transfer program and want to support this request in order to mitigate any economic hardship in FY 2013 for LAGC IFQ vessels. Although NMFS still need more time to develop the full re-transfer programming procedures (e.g., allowing for leased IFQ to be leased again in the same FY, allowing for permanent transfers to be permanently transferred again in the same FY), NMFS will, upon the effectiveness of this action, allow a vessel to permanently transfer IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY.

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

Framework 24 measures affect all vessels with LA and LAGC scallop permits. The Framework 24 document provides extensive information on the number and size of vessels and small businesses that will be affected by these regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2011, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. In FY 2011, NMFS issued 288 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 103 NGOM, and 279 incidental catch permits. Of these, 169 IFQ, 14 NOGM, and over 76 incidental permitted vessels were active. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently, or if they transfer IFQ to another IFQ vessel and permanently relinquish the vessel's scallop permit. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but would likely be fewer than 10 permits per year.

For the purposes of the RFA, the Small Business Administration (SBA) defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 M annually. In prior Scallop FMP actions, each vessel was considered a small business entity and was treated individually for the purposes of the RFA analyses. In this action, the Council recognized ownership affiliations and made very basic connections between multiple vessels to single owners and has made distinctions between large business entities and small business entities, as defined by the RFA. Although several vessels are owned by a single owner (i.e., 68 vessels out of a total of 343 LA vessels), the majority of the limited access vessels are owned by affiliated entities comprised of several individuals having ownership interest in multiple vessels (i.e., 275 vessels out of a total of 343 LA vessels). The sum of annual gross receipts from all scallop vessels operated by the majority of the multiple boat owners (but not all) would exceed $4 M in business revenue in 2011 and 2012, qualifying them as "large" entities. In FY 2010, 190 vessels, including LA and LAGC permitted-vessels, belonged to 27 large business entities that each grossed more than $4 M annually in scallop revenue. In the same year, 153 vessels belonged to 105 small business entities (ownership ranged from 1 to 4 vessels) that each grossed less than $4 M a year in scallop revenue. In FY 2011, scallop revenue greatly increased as the scallop ex-vessel prices increased by 20 percent from 2010 prices. As a result, more business entities fell in the large entity category (i.e., the number of LA permits that grossed more than $4 M annually increased to 34, and the number of small entities decreased to 97). It is likely that the number of large and small entities in FY 2012 were similar to those in FY 2011.

The Office of Advocacy at the SBA suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. The changes in profits, costs, and net revenues due to Framework 24 are not expected to be disproportional for small versus large entities since each vessel will receive the same number of open areas DAS and access area trips allocations according to the categories they belong to (i.e., the allocations for all full-time vessels are identical, and the allocations for the part-time and occasional vessels are proportional to the full-time allocations, 40 percent and 8.33 percent of the full-time allocations, respectively). As a result, this action will have proportionally similar impacts on revenues and profits of each vessel and each multi-vessel owner compared both to status quo (i.e., FY 2012) and no action levels. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities. A summary of the economic impacts relative to the profitability criterion is provided in the proposed rule under "Economic Impacts of Proposed Measures and Alternatives."

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

During the development of Framework 24, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Proposed actions and alternatives are described in detail in Framework 24, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. Reasonable alternatives, particularly for the prescribed catch limits, are limited because of the legal requirements to implement effective conservation measures which necessarily may result in negative impacts that cannot be effectively mitigated. Catch limits are fundamentally a scientific calculation based on the scallop FMP control rules and SSC approval, and, therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years and have provided many mitigating measures applicable every fishing year.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements several measures that enable small entities to offset some portion of the estimated economic impacts. These measure include: Prorating LAGC IFQ access area trips to incorporate CA2; adjusting the GB access area seasonal closures; ensuring that LAGC vessels can fish at least part of the year within the AM closures; revising the scallop fishery AM trigger; allowing for more flexibility in the IFQ leasing program; and modifying the OBS set-aside.

This final action prorates LAGC IFQ trips proportionally in all open access areas excluding CA2, with positive economic impacts on the LAGC vessels because they will be able to use CA2 trips in areas closer to the shore with lower trip costs, and will offset some of the negative impacts of the reduced FY 2013 allocation.

This action also modifies the GB seasonal restrictions to provide access during months with highest scallop meat weights and to minimize yellowtail bycatch. As a result, this provides higher flexibility to vessels than the current seasonal closure schedule (i.e., 4.5 months in length), since NLS and CA1 would have no closures, and CA2 would only close for 3 months.

Unlike the current limited access AMs that closure areas for up to a full FY, the LAGC fishery YTF AMs that will be implemented with this final rule allow for fishing to continue part of the year within part of the AM closure areas (i.e., some of the closure areas would be open for parts of the year when traditional fishing has occurred). The Council developed this measure to recognize that LAGC vessels are more limited in terms of the areas where they can fish for scallops. For LAGC vessels using trawls, the AM provides additional flexibility by allowing these vessels to switch to dredge gear during the trawl closure period. These LAGC AM measures mitigate the potential economic impacts of the AM closures on these smaller vessels.

If reliable information is not available to make a mid-year determination of the need to implement an AM for the YTF sub-ACL, NMFS will wait until enough information is available before making a decision to implement an AM. This will avoid confusing situations where an AM is implemented, then reconsidered and partially revoked based on updated data, allowing for more management stability with which to make solid business decisions for a given FY.

This final rule also allows transfer of quota after an LAGC IFQ vessel landed scallops in a given FY and will allow IFQ to be transferred more than once (i.e., re-transfers). This measure will enable vessels to fully harvest their quotas with more ease, thus mitigating some of the negative impacts of the reduced FY 2013 allocation.

The adjustment from area-specific OBS to allowing for OBS to be transferred from one area to another will enable the more efficient use of this set-aside. OBS set-aside will be more fully utilized by vessels, which will support better observer coverage and monitoring efforts.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as "small entity compliance guides." The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

One measure in this rulemaking imposes new reporting, recordkeeping or other compliance requirements upon the small entities that participate in the fishery.

Under this final action, all LAGC IFQ vessels are required to call in weekly with their expected open area trip usage, similar to current requirements for LAGC IFQ trips in access areas. This measure is intended to improve observer coverage for LAGC open area trips by incorporating them into the industry-funded observer program, rather than continuing to fund them under NMFS's Northeast Fisheries Observer Program, which results in lower coverage levels due to competing interests with funding observers in other target fisheries. Observer coverage in the LAGC scallop fishery is necessary to monitor the bycatch of finfish, including YTF, skates, monkfish, cod, and other species. Monitoring of YTF and windowpane flounder is of particular concern because the scallop fishery is constrained by a fishery-specific sub-Annual Catch Limit (ACL) for these stocks. Observer coverage is also needed to monitor interactions of the LAGC scallop fishery with endangered and threatened sea turtles in open areas.

Notification requires the dissemination of the following information: Gear type (dredge or trawl); specification of LA or LAGC; area to be fished (for FY 2013, these areas include NLS, CA1, CA2, HC, Mid-Atlantic open areas, or GB open areas); phone number; Federal fishery permit number; name; vessel name; port and state of departure; and estimated date of sail. This information will be used to place observers on LAGC scallop vessels to monitor catch, discards, and potential sea turtle interactions on open area trips. While this is a new requirement, vessels would never be obligated to call in more than once a week and already have a weekly call-in requirement for access area trips. As a result of the current collection of information requirements, there will be no additional burden hours compared to what has already been analyzed. The burden estimates, including the new requirement, applies to all LA and LAGC IFQ vessels and assumed that each vessel would call in to the observer program a total of 50 times in a given FY. NMFS estimates each response to take about 10 min, with an associated cost of $1.00. NMFS has estimated the cost to observer providers to respond to each vessel request to take about 5 min, with an associated cost of $0.50. In 2011, there were 259 LAGC IFQ vessels. Therefore, 12,950 requests (50 calls x 259 vessels) will impose total compliance costs of $19,425. These estimates are likely over-estimates, as an LAGC IFQ vessel would likely not call in 50 times a year.

This action contains no other compliance costs. It does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 3, 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 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 § 648.10, paragraph (f)(1) is revised to read as follows:

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

* * * * *

(f) * * *

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under

paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery by notifying the Regional Administrator through the VMS. If the vessel has not fished for any fish (i.e., steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

* * * * *

■ 3. In § 648.11, paragraphs (g)(1), (g)(2)(ii), (g)(5)(i)(B), (g)(5)(ii), and the introductory text to paragraphs (g)(5) and (g)(5)(i), are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access and LAGC IFQ permits are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) * * *

(ii) *LAGC IFQ vessels.* LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any scallop trip, and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas or additional catch per trip for LAGC IFQ trips in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

* * * * *

(B) *Open area scallop trips.* For purposes of determining the daily rate for an observed scallop trip for DAS or LAGC IFQ open area trips, regardless of the status of the industry-funded observer set-aside, a service provider shall charge dock to dock where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 p.m. and lands on July 3rd at 1 a.m., the time at sea equals 27 hr, so the provider would charge 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area or on an open area LAGC IFQ trips for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

* * * * *

■ 4. In § 648.14, paragraphs (i)(2)(vi)(F), (i)(2)(vi)(G), (i)(4)(i)(G), and (i)(4)(iii)(E) are removed and reserved, and paragraphs (i)(1)(iii)(A)(*1*)(*iii*), (i)(1)(iii)(A)(*2*)(*iii*), (i)(3)(i)(B), (i)(4)(i)(A), and (i)(4)(iii)(D) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies, Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

* * * * *

(*2*) * * *

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies, or Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

* * * * *

(3) * * *

(i) * * *

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit, or is an IFQ scallop vessel that is properly declared into the IFQ scallop, NE multispecies, Atlantic

surfclam or quahog, or other fishery requiring a VMS declaration.

* * * * *

(4) * * *

(i) * * *

(A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d).

* * * * *

(iii) * * *

(D) Prior to March 1, 2014, request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year.

* * * * *

■ 5. In § 648.51, the introductory text to paragraph (b), and paragraphs (b)(1) and (b)(5)(ii), are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 600 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.60(g)(2), and the scallop dredge exemption areas specified in § 648.80. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

(5) * * *

(ii) *Requirement to use a turtle deflector dredge (TDD) frame*—(A) From May 1 through October 31, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the EEZ, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(*1*) through (b)(5)(ii)(A)(*5*) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(*1*) The cutting bar must be located in front of the depressor plate.

(*2*) The acute angle between the plane of the bale and the strut must be less than or equal to 45 degrees.

(*3*) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 inches (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 inches (30.5 cm) in length may be attached to each of the outer bale bars. Only one side of the flaring bar may be attached to the dredge frame. The appendage should at no point be closer than 12 inches (30.5 cm) to the cutting bar.

(*4*) Struts must be spaced 12 inches (30.5 cm) apart or less from each other, along the entire length of the frame.

(*5*) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension ("bump out") connecting the outer bale bars to the dredge frame. This "bump out" must exceed 12 inches (30.5 cm) in length, as measured along the inside of the bale bar from the front of the cutting bar to the first bend in the bale bar.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD, except that such a vessel is exempt from the "bump out" requirement specified in paragraph (b)(5)(ii)(A)(*5*) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m), because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) *TDD-related definitions.* (*1*) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(*2*) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(*3*) The struts are the metal bars connecting the cutting bar and the depressor plate.

* * * * *

■ 6. In § 648.52, paragraphs (a) and (g) are revised to read as follows:

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

* * * * *

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

■ 7. In § 648.53, paragraph (b)(5) is removed and reserved and paragraphs (a), (b)(1), (b)(4), (c), (g), (h)(3)(i)(B), and (h)(5) are revised to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established

through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as specified in paragraphs (a)(3) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in § 648.56(d). The ABC/ACL for the 2014 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2013 through 2014 shall be:

(i) *2013:* 21,004 mt (46,305,894 lb).

(ii) *2014:* 23,697 mt (52,242,942 lb).

(iii) [Reserved]

(2) *Scallop incidental catch target TAC.* The annual incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt).

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in §-648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2014 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2013 and 2014 are:

(A) *2013:* 19,093 mt (42,092,979 lb).

(B) *2014:* 21,612 mt (47,647,385 lb).

(C) [Reserved]

(ii) The limited access fishery ACTs for fishing years 2013 and 2014 are:

(A) *2013:* 15,324 mt (33,783,637 lb).

(B) *2014:* 15,428 mt (34,012,918 lb).

(C) [Reserved]

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a).

(i) The ACLs for fishing years 2013 and 2014 for LAGC IFQ vessels without a limited access scallop permit are:

(A) *2013:* 1,010 mt (2,227,142 lb).

(B) *2014:* 1,144 mt (2,521,026 lb).

(C) [Reserved]

(ii) The ACLs for fishing years 2013 and 2014 for vessels issued both a LAGC and a limited access scallop permits are:

(A) *2013:* 101 mt (222,714 lb).

(B) *2014:* 114 mt (252,103 lb).

(C) [Reserved]

(b) * * *

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) 2013 fishing year: 2,550 lb/DAS (1,157 kg/DAS).

(ii) 2014 fishing year: 2,600 lb/DAS (1,179 kg/DAS).

(iii) [Reserved]

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii) of this section, as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2013	2014
Full-Time	33	26
Part-Time	13	9
Occasional	3	2

(i) [Reserved]

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception* —If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated

with the limited access fleet's landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for up to 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

* * * * *

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 210 mt (463,054 lb) in fishing year 2013, and 237 mt (522,429 lb) in fishing year 2014.

(2) At the start of each scallop fishing year, the observer set-aside specified in paragraph (g)(1) of this section initially shall be divided proportionally by access and open areas, based on the amount of effort allocated into each area, in order to set the compensation and coverage rates. NMFS shall monitor the observer set-aside usage and may transfer set-aside from one area to another if one area is using more or less set-aside than originally anticipated. The set-aside may be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside shall be considered completely harvested when the full one percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS shall continue to proactively adjust compensation rates and/or observer coverage levels mid-year in order to minimize the chance that the set-aside would be harvested prior to the end of the FY. Utilization of the set-aside shall be on a first-come, first-served basis. When the set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional scallop catch or DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(3) *DAS set-aside for observer coverage.* A limited access scallop vessel carrying an observer in open areas shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer set-aside amount in the applicable fishing year.

* * * * *

(h) * * *

(3) * * *

(i) * * *

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

* * * * *

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer (e.g. lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. For the remainder of the 2013 fishing year, IFQ, once temporarily transferred, cannot be temporarily transferred again to another vessel. Beginning on March 1, 2014, IFQ can be temporarily transferred more than once (i.e., re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year after March 1, 2014. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg) up to the entire allocation, unless the transfer reflects the total IFQ amount remaining on the transferor's vessel, or

the entire IFQ allocation. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* (A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. For the remainder of the 2013 fishing year, IFQ permanently transferred to a vessel during the 2013 fishing year may then be temporarily transferred (i.e., leased) to another vessel(s) in any amount not to exceed the original permanent transfer. For the remainder of 2013 fishing year, such IFQ may not be permanently re-transferred to another vessel. Beginning March 1, 2014, IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (i.e., leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year after March 1, 2014.

(B) If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferor vessel, unless the owner of the transferor vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. For the remainder of the 2013 fishing year, a vessel owner can permanently transfer portions of his/her vessel's IFQ to another vessel(s) during the 2013 fishing year, and such vessel(s) may then temporarily transfer (i.e., lease) such IFQ to another vessel(s) in any amount not to exceed the original permanent transfer(s). Beginning on March 1, 2014, IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (i.e., leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If the applicants are requesting a transfer of IFQ that has already been transferred in a given fishing year, both parties must be up-to-date with all data reporting requirements (e.g., all necessary VMS catch reports, VTR, and dealer data must be submitted) in order for the application to be processed.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

(D) If an LAGC IFQ vessel transfers (i.e., temporary lease or permanent transfer) all of its allocation to other IFQ vessels prior to Framework 24's implementation (i.e., transfers more than what it is allocated for fishing year 2013 pursuant to the implantation of Framework 24), the vessel(s) to which the scallops were transferred (i.e., the transferee) shall receive a pound-for-pound deduction in fishing year 2013 equal to the difference between the amount of scallops transferred and the amount allocated to the transferring vessel for 2013 pursuant to Framework 24. The vessel that transferred the

scallops shall not be assessed this deduction. For example, Vessel A is allocated 5,000 lb (2,268 kg) of scallops at the start of fishing year 2013, but would receive 3,500 lb (1,588 kg) of scallops once Framework 24 is implemented. If Vessel A transfers its full March 1, 2013, allocation of 5,000 lb (2,268 kg) to Vessel B prior to Framework 24's implementation, Vessel B would lose 1,500 lb (680 kg) of that transfer once Framework 24 is implemented. In situations where a vessel leases out its IFQ to multiple vessels, the deduction of the difference between the original amount of scallops allocated and the amount allocated pursuant to Framework 24 shall begin to apply only to the transfer(s) that exceed the original allocation. Using the example above, if Vessel A first leases 3,000 lb (1,361 kg) of scallops to Vessel B and then leases 2,000 lb (907 kg) of scallops to Vessel C, only Vessel C would have to pay back IFQ in excess of Vessel A's ultimate fishing year 2013 allocation (i.e., Vessel C would have to give up 1,500 lb (680 kg) of that quota because Vessel A ultimately only had 500 lb (227 kg) of IFQ to lease out). If a vessel has already fished its leased-in quota in excess of the amount ultimately allocated pursuant to Framework 24, the vessel must either lease in more quota to make up for that overage during fishing year 2013, or the overage, along with any other overages incurred in fishing year 2013, shall be deducted from its fishing year 2014 IFQ allocation as part of the individual AM applied to the LAGC IFQ fleet, as specified in paragraph (h)(2)(vi) of this section.

■ 8. In § 648.54, paragraph (c) is revised to read as follows:

§ 648.54 State waters exemption.

* * * * *

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(2) and (b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

* * * * *

■ 8. In § 648.58, paragraphs (a) and (b) are added to read as follows:

§ 648.58 Rotational Closed Areas.

(a) *Elephant Trunk Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50′ N	74°20′ W
ETAA2	38°10′ N	74°20′ W
ETAA3	38°10′ N	73°30′ W
ETAA4	38°50′ N	73°30′ W
ETAA1	38°50′ N	74°20′ W

(b) *Delmarva Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N	74°50′ W
DMV2	38°10′ N	74°00′ W
DMV3	37°15′ N	74°00′ W
DMV4	37°15′ N	74°50′ W
DMV1	38°10′ N	74°50′ W

* * * * *

■ 9. Revise § 648.59 to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) [Reserved]

(b) *Closed Area I Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), a vessel issued a scallop permit may fish for, possess, and land scallops in or from the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude
CAIA1	41°26′ N	68°30′ W
CAIA2	40°58′ N	68°30′ W
CAIA3	40°54.95′ N	68°53.40′ W
CAIA4	41°04.30′ N	69°01.29′ W
CAIA1	41°26′ N	68°30′ W

(4) [Reserved]

(5) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in paragraph (c)(5)(i) of this section. The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (b)(5)(i). The Closed Area I Access Area scallop TAC for limited access scallop vessels is 1,534,000 lb (695.8 mt) in fishing year 2013. Limited access scallop vessels shall not receive Closed Area I Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop

vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels will be allocated 5.5 percent of the Closed Area I Access Area TAC in fishing year 2013. The Closed Area I Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC IFQ vessels are allocated a total of 212 trips in fishing year 2013 in the Closed Area I Access Area. This trip allocation is based on 5.5 percent of the Closed Area I Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2014. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area I Access Area trip shall count against that vessel's IFQ.

(iii) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c).

(c) *Closed Area II Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (c)(5)(ii)(C) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIA1	41°00′ N.	67°20′ W.
CAIIA2	41°00′ N.	66°35.8′ W.
CAIIA3	41°18.6′ N.	(1) (2)
CAIIA4	41°30′ N.	(3)
CAIIA5	41°30′ N.	67°20′ W.
CAIIA1	41°00′ N.	67°20′ W.

[1] The intersection of 41°18.6 N. lat. and the U.S.-Canada maritime boundary.

[2] From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary

[3] The intersection of 41°30 N. lat. and the U.S.-Canada maritime boundary.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips* —(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The Closed Area II Access Area scallop TAC for limited access scallop vessels is 2,366,000 lb (1,073.2 mt) in fishing year 2013. Limited access scallop vessels shall not receive Closed Area II Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels.* (A) The percentage of the total Closed Area II Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2013 fishing year.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register** unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area II Access Area trip shall count against that vessel's IFQ.

(d) *Nantucket Lightship Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1	40°50′ N	69°30′ W
NLAA2	40°50′ N	69°00′ W
NLAA3	40°20′ N	69°00′ W
NLAA4	40°20′ N	69°30′ W
NLAA1	40°50′ N	69°30′ W

(4) [Reserved]

(5) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The Nantucket Lightship Access Area scallop TAC for limited access scallop vessels is 1,508,000 lb (684.0 mt) in fishing year 2013. Limited access scallop vessels shall not receive Nantucket Lightship Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels are allocated 5.5 percent of the Nantucket Lightship Access Area TAC in fishing year 2013. The Nantucket Lightship Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC scallop vessels are allocated 206 trips to the Nantucket Lightship Access Area in fishing year 2013. This trip allocation is based on 5.5 percent of the Nantucket Lightship Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Nantucket Lightship Access Area trip shall count against that vessel's IFQ.

(e) *Hudson Canyon Sea Scallop Access Area.* (1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Hudson Canyon Access Area, described in paragraph (e)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (e)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N	73°10′ W
H2	39°30′ N	72°30′ W
H3	38°30′ N	73°30′ W
H4	38°50′ N	73°30′ W
H5	38°50′ N	73°42′ W
H1	39°30′ N	73°10′ W

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Hudson Canyon Sea Scallop Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Hudson Canyon Access Area trip that was terminated early, as specified in § 648.60(c). The Hudson Canyon Access Area scallop TAC for limited access scallop vessels is 2,730,000 lb (1,238.3 mt) in fishing year 2013. Limited access scallop vessels shall not receive Hudson Canyon Access Area trip allocations in fishing year 2014.

(ii) *LAGC IFQ scallop vessels*—(A) The percentage of the Hudson Canyon Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number

of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels shall be allocated 5.5 percent of the Hudson Canyon Access Area TAC in fishing year 2013. The Hudson Canyon Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC IFQ vessels are allocated a total of 317 trips in the Hudson Canyon Access Area in fishing year 2013. This trip allocation is based on 5.5 percent of the Hudson Canyon Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Hudson Canyon Access Area, or enter the Hudson Canyon Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

(f) *Transiting.* A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter the Sea Scallop Access Areas described in paragraphs (a), (b), (d), and (e), of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed in accordance with § 648.23(b). A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (c) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

■ 10. In § 648.60, paragraphs (a)(3)(ii)(A), (a)(4)(i), (c)(5)(ii)(A), and (e)(3) are removed and reserved, and paragraphs (a)(3)(i), (a)(5)(i), (d), (e)(1), and (g)(4)(ii) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(3) * * *

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section. No access area trips are allocated for fishing year 2014.

(B) *Full-time scallop vessels.* In fishing year 2013, each full-time vessel shall have a total of two access area trips in two of the following areas: Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available on the NMFS Northeast Region Web site prior to the start of the 2013 fishing year. If, prior to the implementation of Framework 24, a full-time vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, that vessel is not eligible to take any additional access area trips in fishing year 2013 and NMFS shall deduct 12 open area DAS in fishing year 2013 from that vessel's allocation.

(C) *Part-time scallop vessels.* (*1*) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: One trip in the Closed Area I Access Area and one trip in the Closed Area II Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Nantucket Lightship Access Area.

(*i*) If, prior to the implementation of Framework 24, a part-time vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, NMFS shall deduct five open area DAS in fishing year 2013 from that vessel's allocation.

(*ii*) [Reserved]

(*2*) For the 2014 fishing year, part-time scallop vessels shall not receive access area trip allocations.

(D) *Occasional scallop vessels.* For the 2013 fishing year, an occasional scallop vessel may take one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Hudson Canyon Access Area. If, prior to the implementation of Framework 24, an occasional vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, NMFS shall deduct one open area DAS in fishing year 2013 from that vessel's allocation.

* * * * *

(5) * * *

(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2013	13,000 lb (5,897 kg)	10,400 lb (4,717 kg)	2,080 lb (943 kg).

* * * * *

(d) *Increase in possession limit to defray costs of observers*—The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) * * *

(1) *Access Areas available for harvest of research set-aside (RSA).* RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of pounds that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2013 and 2014 are:

(i) *2013:* Hudson Canyon Access Area, Nantucket Lightship Access Area, Closed Area I Access Area, and Closed Area II Access Area.

(ii) *2014:* None.

* * * * *

(g) * * *

(4) * * *

(ii) *Other species.* Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(b) through (d) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i).

* * * * *

■ 11. In § 648.61, paragraphs (a)(1) and (5) are revised to read as follows.

§ 648.61 EFH closed areas.

(a) * * *

(1) *Western GOM Habitat Closure Area.* The restrictions specified in this paragraph (a) apply to the Western GOM Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM1	43°15′	70°15′
WGM2	42°15′	70°15′
WGM3	42°15′	70°00′
WGM4	43°15′	70°00′
WGM1	43°15′	70°15′

* * * * *

(5) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (a) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bounded by straight lines, except where noted, connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	(1) (2)
CIIH3	42°00′	(3)
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

[1] The intersection of 42°10 N. lat. and the U.S.-Canada maritime boundary.

[2] From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

[3] The intersection of 42°00 N. lat. and the U.S.-Canada maritime boundary.

* * * * *

■ 12. In § 648.62, paragraph (b)(1) is revised to read as follows.

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2013 and 2014 fishing years.

* * * * *

■ 13. In § 648.64, paragraph (d) is removed and reserved, and paragraphs (a), (b)(1), (c), and (e) are revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACLs for the 2013 fishing year are specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations.

(b) * * *

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL ACCOUNTABILITY MEASURE CLOSURE

Point	N. lat.	W. long.
GBYT AM 1	41°50′	(1) (2)
GBYT AM 2	40°30.75′	(3)
GBYT AM 3	40°30′	66°40′
GBYT AM 4	40°40′	66°40′
GBYT AM 5	40°40′	66°50′
GBYT AM 6	40°50′	66°50′
GBYT AM 7	40°50′	67°00′
GBYT AM 8	41°00′	67°00′
GBYT AM 9	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1	41°50′	66°51.94′

[1] The intersection of 41°50 N. lat. and the U.S.-Canada maritime boundary.

[2] From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

[3] The intersection of 41°30.75 N. lat. and the U.S.-Canada maritime boundary.

* * * * *

(c) *Southern New England/Mid-Atlantic accountability measures*—(1) *Limited access scallop vessels.* (i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail

flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(1)(ii) of this section. The Southern New England Yellowtail Accountability Measure Closure Area for Limited Access Scallop Vessels is comprised of Northeast Region Statistical Areas #537, #539 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LA SNEYT AM 1	(1)	73°00′
LA SNEYT AM 2	40°00′	73°00′
LA SNEYT AM 3	40°00′	71°40′
LA SNEYT AM 4	39°50′	71°40′
LA SNEYT AM 5	39°50′	70°00′
LA SNEYT AM 6	(2) (3)	70°00′
LA SNEYT AM 7 (4)	41°16.76′	70°13.47′
LA SNEYT AM 8 (5)	41°18.01′	70°15.47′
LA SNEYT AM 9 (6)	41°20.26′	70°18.30′
LA SNEYT AM 10 (7)	41°21.09′ (8)	70°27.03′
LA SNEYT AM 11	41°20′	(9)
LA SNEYT AM 12	41°20′	71°10′
LA SNEYT AM 13	(10) (11)	71°10′
LA SNEYT AM 14	(12)	71°40′
LA SNEYT AM 15	41°00′	71°40′
LA SNEYT AM 16	41°00′ (13)	(14)

[1] The south facing mainland coastline of Long Island.
[2] The southern coastline of Nantucket.
[3] From Point F to Point G along the southern coastline of Nantucket.
[4] Point G represents Esther Island, Nantucket, Massachusetts.
[5] Point H represents Tuckernuck Island, Nantucket, Massachusetts.
[6] Point I represents Muskeget Island, Nantucket, Massachusetts.
[7] Point J represents Wasque Point, Chappaquiddick Island, Massachusetts.
[8] From Point J to Point K along the southern coastline of Martha's Vineyard.
[9] The western coastline of Martha's Vineyard.
[10] The southern coastline of Rhode Island.
[11] From Point M to Point B following the mainland coastline of Rhode Island.
[12] The southern coastline of Rhode Island.
[13] From Point P back to Point A along the southern mainland coastline of Long Island.
[14] Southeast facing coastline of Long Island.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area for limited access vessels shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.
15.1–16	March through June and November through February.
16.1–18	March through July and November through February.
18.1–19	March through August and October through February.
19.1 or more	March through February.

(2) *Limited access general category IFQ scallop vessels using dredges*—(i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in paragraph (c)(2)(iii) of this section are met, the Southern New England Yellowtail Accountability Measure Closure Areas described in paragraphs (c)(2)(ii) through (iv) of this section shall be closed to scallop fishing by vessels issued an LAGC IFQ scallop permit and using dredges for the period of time specified in paragraph (c)(2)(v) of this section.

(ii) *Closure Area 1* is comprised of Northeast Region Statistical Area #537, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM1 A	41°20′	(1)
LAGC Dredge SNEYT AM1 B	41°20′	71°10′
LAGC Dredge SNEYT AM1 C	41°10′	71°10′

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM1 D	41°10′	71°20′
LAGC Dredge SNEYT AM1 E	40°50′	71°20′
LAGC Dredge SNEYT AM1 F	40°50′	71°40′
LAGC Dredge SNEYT AM1 G	39°50′	71°40′
LAGC Dredge SNEYT AM1 H	39°50′	70°00′
LAGC Dredge SNEYT AM1 I	(2)(3)	70°00′
LAGC Dredge SNEYT AM1 J (4)	41°16.76′	70°13.47′
LAGC Dredge SNEYT AM1 K (5)	41°18.01′	70°15.47′
LAGC Dredge SNEYT AM1 L (6)	41°20.26′	70°18.30′
LAGC Dredge SNEYT AM1 M (7)	41°21.09′ (8)	70°27.03′

[1] The western coastline of Martha's Vineyard.
[2] The southern coastline of Nantucket.
[3] From Point I to Point J along the southern coastline of Nantucket.
[4] Point J represents Esther Island, Nantucket, Massachusetts.
[5] Point K represents Tuckernuck Island, Nantucket, Massachusetts.
[6] Point L represents Muskeget Island, Nantucket, Massachusetts.
[7] Point M represents Wasque Point, Chappaquiddick Island, Massachusetts.
[8] From Point M back to Point A along the southern coastline of Martha's Vineyard.

(iii) *Closure Area 2* is comprised of Northeast Region Statistical Area #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM2 A	(1)	73°00′
LAGC Dredge SNEYT AM2 B	40°00′	73°00′
LAGC Dredge SNEYT AM2 C	40°00′	71°40′
LAGC Dredge SNEYT AM2 D	41°00′	71°40′
LAGC Dredge SNEYT AM2 E	41°00′ (2)	(3)

[1] The south facing mainland coastline of Long Island.
[2] Southeast facing coastline of Long Island.
[3] From Point E back to Point A along the southern mainland coastline of Long Island.

(iv) *Closure Area 3* is comprised of Northeast Region Statistical Area #539, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM3 A	(1)	71°40′
LAGC Dredge SNEYT AM3 B	40°50′ N	71°40′
LAGC Dredge SNEYT AM3 C	40°50′ N	71°20′
LAGC Dredge SNEYT AM3 D	41°10′ N	71°20′
LAGC Dredge SNEYT AM3 E	41°10′ N	71°10′
LAGC Dredge SNEYT AM3 F	(1) (2)	71°10′

[1] The southern coastline of Rhode Island.
[2] From Point F back to Point A following the southern mainland coastline of Rhode Island.

(v) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure areas for LAGC IFQ vessels using dredge gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	AM closure area and duration		
	AM Closure Area 1	AM Closure Area 2	AM Closure Area 3
2 or less	Mar–Apr	Mar–Apr	Mar–Apr.
2.1–7	Mar–May, Feb	Mar–May, Feb	Mar–May, Feb.
7.1–12	Mar–May, Dec–Feb	Mar–May, Feb	Mar–May, Dec–Feb.
12.1–16	Mar–Jun, Nov–Feb	Mar–May, Feb	Mar–Jun, Nov–Feb.
16.1 or greater	Mar–Jun, Nov–Feb	Mar–May, Feb	All year.

(vi) The Southern New England/Mid-Atlantic yellowtail flounder accountability measure for LAGC IFQ vessels using dredge gear shall only be triggered if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL is exceeded, an accountability measure is triggered for the limited access scallop fishery, and the catch of yellowtail flounder by LAGC IFQ vessels using dredge gear was estimated to be more than 3 percent of the total catch of yellowtail flounder in the scallop fishery. For example, in a given fishing year, if the total sub-ACL for the

scallop fishery was 50 mt of yellowtail flounder and LAGC IFQ vessels using dredge gear caught an estimated 1 mt, accountability measures for IFQ vessels using dredges would not trigger because the fishery did not catch more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL (1.5 mt), even if the total sub-ACL was exceeded. If LAGC IFQ vessels using dredge gear caught more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder, but the sub-ACL is not exceeded and the limited access accountability measure is not triggered, LAGC IFQ vessels using dredge gear would not trigger their own accountability measure.

(3) *Limited access general category IFQ scallop vessels using trawls*—(i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in paragraph (c)(3)(iii) of this section are met, the area defined by the following coordinates shall be closed to LAGC vessels fishing with trawl for the period of time specified in paragraph (c)(3)(ii) of this section. Southern New England Yellowtail Accountability Measure Closure Area for Limited Access General Category IFQ Scallop Vessels using Trawl Gear is comprised of Northeast Region Statistical Areas #612 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Trawl SNEYT AM A	40°00′	(1)
LAGC Trawl SNEYT AM B	40°00′	71°40′
LAGC Trawl SNEYT AM C	41°00′	71°40′
LAGC Trawl SNEYT AM D	41°00′ (2)	(3)

[1] New Jersey mainland coastline.
[2] From Point D back to Point A along the southern mainland coastline of Long Island and New York, and the eastern coastline of New Jersey.
[3] Southeast facing coastline of Long Island, NY.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure area for LAGC IFQ vessels using trawl gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.

(iii) The accountability measure for LAGC vessels using trawl gear shall be triggered under the following conditions:

(A) If the estimated catch of Southern New England/Mid-Atlantic yellowtail flounder by LAGC IFQ vessels using trawl gear is more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, the accountability measure for LAGC IFQ vessels using trawl gear shall be triggered, regardless of whether or not the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL was exceeded in a given fishing year. In this case, the accountability measure closure season shall be from March–June and again from December–February (a total of 7 months). For example, if the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is 50 mt, LAGC IFQ vessels using trawl gear would trigger a 7-month closure, the most restrictive closure duration specified in paragraph (c)(3)(ii) of this section, if they caught 5 mt or more of yellowtail flounder.

(B) If the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is exceeded, resulting in an accountability measure for the limited access fleet as specified in paragraph (c)(1) of this section, LAGC IFQ vessels using trawl gear shall be subject to a seasonal closure accountability measure, as specified in paragraph (c)(3)(i) of this section, based on the total scallop fishery's sub-ACL overage, as specified in paragraph (c)(3)(ii) of this section.

(C) If both of these conditions are triggered, (i.e., LAGC IFQ vessels using trawl gear catch more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL and the overall Southern New England/Mid-Atlantic yellowtail flounder sub-ACL is exceeded, triggering limited access scallop fishery accountability measures), the most restrictive accountability measure shall apply to LAGC IFQ vessels using trawl gear (i.e., the closure season would be from March–June and again from December–February).

(iv) If the LAGC accountability measure for vessels using trawl gear is triggered, a vessel can switch to dredge gear to continue fishing in the LAGC trawl closure areas, as specified in paragraph (c)(3)(i) of this section, during the time of year when trawl gear is prohibited, as specified in paragraph (c)(3)(ii) of this section. If such a vessel does switch to dredge gear, it is subject to any yellowtail flounder accountability measures that may be in place for that gear type, as specified in paragraph (c)(3) of this section.

* * * * *

(e) *Process for implementing the AM*—(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount

of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (e.g., when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded by scallop vessels following the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (e.g., an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch and overage information.

* * * * *

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Proposed Rules

Federal Register
Vol. 78, No. 90
Thursday, May 9, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–5–000]

Version 5 Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of Proposed Rulemaking; correction.

SUMMARY: This document contains corrections to the proposed rule (RM13–5–000) which was published in the **Federal Register** of Wednesday, April 24, 2013 (78 FR 24107). The regulations proposed to approve certain reliability standards proposed by the North American Electric Reliability Corporation.

DATES: Effective on June 24, 2013.

FOR FURTHER INFORMATION CONTACT: Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6840.

SUPPLEMENTARY INFORMATION:

Errata Notice

On April 18, 2013, the Commission issued an "Notice of Proposed Rulemaking" in the above-captioned proceeding, *Version 5 Critical Infrastructure Protection Reliability Standards,* 143 FERC ¶ 61,055 (2013).

This errata notice serves to correct P 119 and the table in P 124. Specifically, in P 119, the reference to "CIP version 4" in the fifth line is changed to "CIP version 5." In addition, in the table in P 124, the "Total Burden Hours in Year 2" estimate is changed to "1,162,788 hrs" and the "Total Burden Hours in Year 3" estimate is changed to "757,948 hrs."

In FR Doc. 2013–09643 appearing on page 24107 in the **Federal Register** of Wednesday, April 24, 2013, the same corrections are made:

1. On page 24121, the reference to "CIP version 4" in the fifth line is changed to "CIP version 5."

2. On page 24122, the "Total Burden Hours in Year 2" estimate is changed to "1,162,788 hrs" and the "Total Burden Hours in Year 3" estimate is changed to "757,948 hrs."

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–10956 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2013–N–0402]

Generic Drug User Fee Amendments of 2012; Regulatory Science Initiatives Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing; request for public comments.

The Food and Drug Administration (FDA or the Agency) is announcing a public meeting that will provide an overview of the current status of the regulatory science initiatives for generic drugs and an opportunity for public input on research priorities in this area. FDA is seeking this input from a variety of stakeholders—industry, academia, patient advocates, professional societies, and other interested stakeholders—as it fulfills its statutory requirement under the Generic Drug User Fee Amendments of 2012 (GDUFA) to develop an annual list of regulatory science initiatives specific to generic drugs. FDA will take the information it obtains from the public meeting into account in developing the fiscal year (FY) 2014 Regulatory Science Plan.

DATES: *Date and Time:* The public meeting will be held on June 21, 2013, from 9 a.m. to 5 p.m. Submit electronic or written requests to make oral presentations and comments by June 7, 2013. Electronic or written comments will be accepted after the public meeting until July 19, 2013, but submission of comments before the meeting is strongly encouraged.

Location: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Comments: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

Transcripts: Transcripts of the public meeting will be available for review at the Division of Dockets Management and on the Internet at: *http://www.regulations.gov* approximately 30 days after the public meeting. A live Webcast of this public meeting will be available at: *https://collaboration.fda.gov/regscipart15/.*

Contact Persons: Thushi Amini, Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., MPN–2, Rm. N–142, Rockville, MD 20855, 240–276–8433, email: *Thushi.Amini@fda.hhs.gov;* or Robert Lionberger, Center for Drug Evaluation and Research, Food and Drug Administration, 7519 Standish Pl., MPN–4, Rm. 3015A, Rockville, MD 20855, 240–276–9315, email: *Robert.Lionberger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2012, Congress passed GDUFA (Title III of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144)). GDUFA is designed to enhance public access to safe, high-quality generic drugs and to reduce costs to industry. To support this goal, FDA agreed in the GDUFA commitment letter to the FY 2013 Regulatory Science Plan, and to consult

with industry and the public in order to create an annual list of regulatory science initiatives specific to research on generic drugs for each subsequent year covered by GDUFA. The FY 2013 Regulatory Science Plan consisted of the following research topics:

1. Bioequivalence of local acting, orally inhaled drug products
2. Bioequivalence of local acting topical dermatological drug products
3. Bioequivalence of local acting gastrointestinal drug products
4. Quality by design of generic drug products
5. Modeling and simulation
6. Pharmacokinetic studies and evaluation of anti-epileptic drugs
7. Excipient effects on permeability and absorption of Biopharmaceutics Classification System Class 3 drugs
8. Product- and patient-related factors affecting switchability of drug-device combinations
9. Postmarketing surveillance of generic drug usage patterns and adverse events
10. Evaluation of drug product physical attributes on patient acceptability
11. Postmarketing assessment of generic drugs and their brand-name counterparts
12. Physicochemical characterization of complex drug substances
13. Develop a risk-based understanding of potential adverse impacts to drug product quality resulting from changes in active pharmaceutical ingredients manufacturing and controls

II. Purpose and Scope of the Public Meeting

The purpose of the public meeting is to provide a forum for the public to provide recommendations to FDA related to regulatory science initiatives in generic drug research. FDA is requesting input from industry and other stakeholders as it develops the FY 2014 Regulatory Science Plan for generic drug research, with a focus on the following:

1. Identification of current regulatory science challenges that limit the availability of generic drug products
2. Regulatory science approaches to improve the preapproval evaluation of therapeutic equivalence of generic drug products
3. Postapproval regulatory science approaches to ensure the therapeutic equivalence of approved generic drug products
4. Prioritization of FY 2014 regulatory science research topics for generic drug products based on public health impact
5. Areas where additional draft guidance is needed to clarify FDA recommendations on complex generic drug product development

FDA will consider all comments made at this meeting or received through the docket (see section V, Request for Comments) as it develops its FY 2014 GDUFA Regulatory Science Plan. Additional information concerning GDUFA, including the text of the law and the letter in which the Agency describes its commitments may be found on the FDA Web site at *http://www.fda.gov/gdufa*.

III. Attendance, Registration, and Presentations

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance will be free and on a first-come, first-served basis. If you wish to attend and/or present at the meeting, please register for the meeting and/or make a request for oral presentation by email to *GDUFARegulatoryScience@fda.hhs.gov* by June 7, 2013. The email should contain complete contact information for each attendee, including name, title, affiliation, address, email address, and telephone number. Those without email access may register by contacting Thushi Amini by June 7, 2013 (see *Contact Persons*).

If you need special accommodations because of a disability, please contact Thushi Amini or Robert Lionberger (see *Contact Persons*) at least 7 days before the meeting. For those unable to attend in person, FDA will provide a Webcast to the meeting. To join the meeting via the Webcast, please go to: *https://collaboration.fda.gov/regscipart15/*.

FDA will try to accommodate all persons who wish to make a presentation. These individuals should identify the section and the number of each question they wish to address (see section II) in their presentation to help FDA organize the presentations. FDA will notify registered presenters of their scheduled presentation times. The time allotted for presentations will depend on the number of individuals who wish to speak. Persons registered to make an oral presentation should check in before the meeting and are encouraged to arrive early to ensure the designated order of presentation times. An agenda for the meeting and other background material will be made available 5 days before the meeting at *http://www.fda.gov/Drugs/NewsEvents/ucm344710.htm*. Once FDA notifies registered presenters of their scheduled times, they should submit an electronic copy of their presentation to *GDUFARegulatoryScience@fda.hhs.gov* on or before June 14, 2013.

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner and the Center for Drug Evaluation and Research. Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C) (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section VI). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

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

VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may also be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be made available in either hardcopy or on CD–ROM upon submission of a Freedom of Information

request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: May 3, 2013.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2013–11007 Filed 5–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. FDA–2013–D–0446]

Draft Guidance for Industry on Expanded Access to Investigational Drugs for Treatment Use—Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Expanded Access to Investigational Drugs for Treatment Use—Qs & As." This guidance is intended to provide information for industry, researchers, physicians, and patients about certain aspects of FDA's implementation of its regulations on expanded access to investigational drugs for treatment use. FDA has received a number of questions about implementation of its expanded access regulations. Therefore, FDA is providing this draft guidance in a question and answer format, addressing the most frequently asked questions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 8, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 or Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *For the Center for Drug Evaluation and Research:* Colleen L. Locicero, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4200, Silver Spring, MD 20993–0002, 301–796–2270.

For the Center for Biologics Evaluation and Research: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Expanded Access to Investigational Drugs for Treatment Use—Qs & As." FDA's expanded access regulations (21 CFR part 312, subpart I) went into effect on October 13, 2009 (74 FR 40900).

These regulations contain the requirements for the use of investigational new drugs or approved drugs where availability is limited by a risk evaluation and mitigation strategy (REMS), when the primary purpose is to diagnose, monitor, or treat a patient's disease or condition. Under these regulations, there are three categories of expanded access based on the size of the patient population to be treated: (1) Individual patient access, including for emergency use; (2) intermediate-size patient population access; and (3) larger population access under a treatment protocol or treatment investigational new drug application (IND). These regulations are intended to facilitate the availability of investigational new drugs, or approved drugs where availability is limited by a REMS, to patients with serious or immediately life-threatening diseases or conditions who lack other therapeutic options and may benefit from investigational therapies.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance entitled "Charging for Investigational Drugs Under an IND—Qs & As," which is intended to provide information about FDA's implementation of its regulation on charging for investigational drugs under an investigational new drug applications, including investigational drugs made available under expanded access programs.

One of FDA's major goals in promulgating these expanded access regulations was to make expanded access a more transparent process by increasing awareness and knowledge of expanded access programs and the procedures for obtaining investigational drugs for treatment use. Since these expanded access regulations went into effect in 2009, FDA has received a number of questions concerning its implementation of the regulations. Consistent with the goal of making expanded access processes more transparent, FDA is providing this draft guidance to address frequently asked questions about how it is interpreting various provisions in the expanded access regulations, including questions about when it is appropriate to request access under each of the three access categories, the types and content of access submissions, IRB review of individual patient expanded access, and the onset and duration of access use.

Although FDA is inviting comment on the entire draft guidance (21 CFR 10.115(g)(1)(ii)(C)), FDA notes that it is particularly interested in receiving comments on question 10. Question 10 asks, "Is Institutional Review Board (IRB) review and approval required for individual patient expanded access?" In the draft guidance, FDA explains that under current regulations for all expanded access uses, including individual patient access uses, investigators are required to ensure that IRB review and approval is obtained consistent with 21 CFR part 56 (21 CFR 312.305(c)(4)). 21 CFR part 56 requires, among other things, that an IRB review the expanded access use at a convened meeting at which a majority of the IRB members are present ("full IRB review") (21 CFR 56.108(c)). However, FDA is aware of concerns that this requirement for full IRB review may deter individual patient access to investigational drugs for treatment use. FDA has encouraged use of central IRBs for review of expanded access uses to address these concerns. However, other options may be needed. Therefore, FDA is particularly interested in receiving comments on this issue, including to what extent the requirement for full IRB review of individual patient expanded access is a deterrent to patient access,

whether FDA should consider alternatives to full IRB review of individual patient expanded access, and what alternative approaches may better facilitate access while providing appropriate ethical oversight.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on expanded access to investigational drugs for treatment use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 312.305, 312.310, 312.315, and 312.320 have been approved under OMB control number 0910–0014.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default* or *http://www.regulations.gov*.

Dated: May 3, 2013.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2013–11005 Filed 5–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. FDA–2013–D–0447]

Draft Guidance for Industry on Charging for Investigational Drugs Under an Investigational New Drug Application—Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Charging for Investigational Drugs Under an IND—Qs & As." This guidance is intended to provide information for industry, researchers, and physicians on how FDA is implementing its regulation on charging for an investigational drug under an investigational new drug (IND) application. FDA has received a number of questions about how it is implementing the charging regulation. Therefore, FDA is providing this draft guidance in a question and answer format, addressing the most frequently asked questions and answers, including questions about charging for investigational drugs made available under expanded access programs.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 8, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For the Center for Drug Evaluation and Research:

Colleen L. Locicero, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4200, Silver Spring, MD 20993–0002, 301–796–2270.

For the Center for Biologics Evaluation and Research:

Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Charging for Investigational Drugs Under an IND—Qs & As." In 2009, FDA amended its regulation concerning charging for investigational new drugs under an IND (August 13, 2009; 74 FR 40872). The new regulation, which went into effect on October 13, 2009, removed paragraph (d) of § 312.7 (21 CFR 312.7) and replaced it with new § 312.8. The new regulation is intended to clarify the circumstances in which charging for an investigational drug in a clinical trial is appropriate, to set forth criteria for charging for an investigational drug for the three types of expanded access for treatment use described in subpart I of 21 CFR part 312, and to clarify what costs can be recovered for an investigational drug. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance entitled "Expanded Access to Investigational Drugs for Treatment Use—Qs & As," which is intended to provide information about FDA's implementation of its expanded access regulations (21 CFR part 312, subpart I).

Since § 312.8 has been in effect, FDA has received numerous questions about how it is implementing the regulation and interpreting various provisions. Consistent with the goal of clarifying the requirements for charging for an investigational drug and the types of costs that can be recovered, FDA is providing a draft guidance in a question and answer format, addressing the most frequently asked questions and answers about charging for investigational drug under an IND.

This draft guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on charging for an investigational drug under an IND. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 312.8 have been approved under OMB control number 0910–0014.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatory Information/default*, or *http://www.regulations.gov*.

Dated: May 3, 2013.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2013–11006 Filed 5–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2013–N–0461]

General and Plastic Surgery Devices: Reclassification of Ultraviolet Lamps for Tanning, Henceforth To Be Known as Sunlamp Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed Order.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify ultraviolet (UV) lamps intended to tan the skin from class I (general controls) exempt from premarket notification to class II (special controls) and subject to premarket notification, and to rename them sunlamp products. FDA is also designating special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the device. FDA is proposing this reclassification on its own initiative based on new information.

DATES: Submit either electronic or written comments on this proposed order by August 7, 2013. See section XI for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0461, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0461. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section.

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

FOR FURTHER INFORMATION CONTACT: Neil R.P. Ogden, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, rm. 1438, Silver Spring, MD 20993–0002, 301–796–6397.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). One type of general control provided by the FD&C Act is a restriction on the sale, distribution, or use of a device under section 520(e) of the FD&C Act (21 U.S.C. 360j(e)). A restriction under section 520(e) must be implemented through rulemaking procedures, unlike the administrative order procedures that apply to this proposed reclassification under section 513(e) of the FD&C Act, as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. Applying these procedures, FDA has classified most preamendments device types (some remain unclassified).

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified under section 513(f)(1) of the FD&C Act into class III without any FDA rulemaking process.

Those devices remain in class III and require premarket approval unless, and until, the device is classified or reclassified into class I or II under section 513(f)(2) or (3) of the FD&C Act or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

On July 9, 2012, Congress enacted FDASIA. Section 608(a) of FDASIA amended the device reclassification procedures under section 513(e) of the FD&C Act, changing the process from rulemaking to an administrative order. Prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. The proposed reclassification order must set forth the proposed reclassification and a substantive summary of the valid scientific evidence concerning the proposed reclassification, including the public health benefits of the use of the device, and the nature and incidence (if known) of the risk of the device. (See section 513(e)(1)(A)(i) of the FD&C Act.)

Section 513(e) provides that FDA may, by administrative order, reclassify a device based upon "new information." FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA. The term "new information," as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, *e.g., Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (DC Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).) Whether data before the Agency are old or new data, the "new information" to support reclassification under section 513(e) must be "valid scientific evidence," as defined in 21 CFR 860.7(c)(2). (See, *e.g., Gen. Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Mfrs. Assoc.* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA also regulates electronic products under chapter 5, subchapter C, of the FD&C Act (21 U.S.C. 360hh *et seq.*). Under these provisions, FDA administers an electronic product radiation control program to protect the public health and safety. This authority provides for developing, amending, and administering radiation safety performance standards for electronic products, including sunlamp products. Sunlamp products are subject to the regulations for electronic product radiation control, including 21 CFR parts 1000 through 1010 and § 1040.20 (21 CFR 1040.20). The sunlamp products performance standard in § 1040.20 was originally published in the **Federal Register** on November 9, 1979 (44 FR 65352). In the **Federal Register** of September 6, 1985 (50 FR 36548), FDA amended § 1040.20 and made it applicable to all sunlamp products manufactured on or after September 8, 1986. FDA plans to propose amendments to this performance standard to reflect current scientific knowledge related to sunlamp use, harmonize it more closely with International Electrotechnical Commission (IEC) International Standard 60335–2–27, Ed. 5.0: 2009–12, and strengthen the warning statement required by § 1040.20(d)(1)(i) in accordance with the results of the study FDA conducted under section 230 of the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85).

II. Regulatory History of the Device

In a 1977 report, the General and Plastic Surgery Device Classification Panel and the Physical Medicine Device Classification Panel (the Panels) recommended that dermatologic UV lamps (devices that provide UV radiation intended primarily for the treatment of dermatologic disorders or for tanning) be classified into class II (see 47 FR 2810 at 2835; January 19, 1982).

The Panels recommended that dermatologic UV lamps be classified into class II because the Panels believed that the electrical and optical properties of the device must be controlled to prevent electrical shock, overexposure because of timer malfunction, and burns to eyes and skin. The Panels believed that general controls would not be sufficient to provide a reasonable assurance of safety and effectiveness, and that a performance standard would provide reasonable assurance of the safety and effectiveness of the device. The Physical Medicine Device Classification Panel also recommended that the device be sold only by prescription. The Panels identified the following risks to health for these devices:

1. Burns to skin and eyes: Improper shielding of eyes or overexposure of UV radiation to skin may result in burns. Also, excessive UV, visible, and infrared radiation from this device can be harmful to the eyes and skin.
2. Aging of skin: Excessive exposure to UV radiation may result in premature aging of skin.
3. Skin cancer: Excessive irradiation of the skin with UV lamps is correlated with increased incidence of skin cancer.
4. Photosensitivity: Exposure of patients with photosensitive skin to UV radiation may induce photosensitivity reactions.

FDA agreed with the Panels' recommendations and proposed that these devices be classified into class II in a proposed rule published in the **Federal Register** on January 19, 1982. However, in its final rule, published on June 24, 1988 (53 FR 23856 at 23868), FDA separated UV lamps for dermatological disorders and UV lamps for tanning. It classified the former in class II under 21 CFR 878.4630, but postponed classification of UV lamps for tanning in order to consider electrical safety information and to consider issuing a proposal to classify UV lamps for tanning in class I. FDA explained that the performance standard for sunlamp products at § 1040.20 addressed the risks to health presented by UV lamps for tanning other than electrical safety hazards. On November 15, 1988 (53 FR 46040), FDA proposed that 70 electromedical devices, including UV lamps for tanning, be classified in class I; FDA finalized this classification on November 20, 1990 (55 FR 48436 at 48440).

On December 7, 1994, FDA amended the classification when it published a final rule in the **Federal Register** (59 FR 63005) that exempted 148 class I devices from premarket notification (with limitations), including UV lamps for tanning. FDA determined that manufacturers' submissions of premarket notifications for UV lamps for tanning were not necessary for the protection of the public health at that time. Prior to the issuance of the 1994 final rule exempting UV lamps for tanning from premarket notification submission, some manufacturers of UV lamps for tanning had already submitted 510(k)s and received clearance for their devices, and at least one 510(k) for a sunlamp product has been cleared since then. As discussed further in this document, these devices may serve as

predicate devices for future 510(k)s if this order is finalized. On July 25, 2001, FDA made a technical amendment to the classification of UV lamps for tanning to state that the exemption from 510(k) is subject to the limitations in 21 CFR 878.9 (66 FR 38786 at 38803).

III. Device Description

The current device classification regulation for this product refers to it as an "ultraviolet lamp for tanning," while the current electronic product performance standard for this product refers to it as a "sunlamp product." Because both of these regulations describe the same product with the same intended use for tanning, FDA proposes to rename the device in this regulation for purposes of consistency and clarity. FDA proposes to identify this device as a "sunlamp product": An electronic product that includes one or more UV lamps and a fixture intended for irradiation of any part of the living human body, by UV radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. This definition includes tanning beds, tanning booths, and UV lamps (bulbs) sold separately.

IV. Summary of Valid Scientific Evidence Concerning Reclassification

A. Public Health Benefit From Use of the Device

It is well recognized that sunlamp products are effective at producing a tan or darkening of the skin (except in very light skin individuals, who may burn instead of tan); and this is perceived by users as an aesthetic benefit. One study reported that 47 percent of college students had reported using a sunlamp product during the last year because it improved their appearance, despite 92 percent being aware of potential health risks (Ref. 1). Investigators have also looked at the effect of sunlamp products on mood to treat depression and/or seasonal affective disorder (SAD). The general therapeutic effect of visible light on SAD has been widely acknowledged (Ref. 2). However, there is no definitive evidence that UV radiation is effective in the treatment of SAD (Refs. 2 and 3).

Vitamin D has been the focus of recent research due to the possibility that it could help prevent some cancers and provide other health benefits (besides the well-recognized effect of contributing to bone health and preventing rickets). Some sunlamp products can produce Vitamin D (Ref. 4), but to date, it is unclear whether the benefit of such production outweighs the risks of use. A meta-analysis by Woo and Eide in 2010 (Refs. 5 and 6) supported the consensus medical and public health opinion that dietary supplements are safer than and as beneficial as tanning to produce Vitamin D. Furthermore, most people meet at least some of their Vitamin D needs through exposure to sunlight in moderate dosages. The World Health Organization (WHO) has stated that "While sunbed use may increase vitamin D synthesis, * * * if people require more vitamin D than the sun can provide (for example, because of living in polar regions) this should be supplemented through diet rather than sunbed use" (Ref. 7). A minority of researchers have argued that the potential benefit of sunlamp products might outweigh the health risks (Refs. 8 and 9).

Proponents of sunlamp products have also claimed that the use of sunlamp products may be helpful in promoting a base tan—a tan that prevents sunburns. However, a base tan, either from the sun or from sunlamp products, provides minimal protection against burning, and there is no evidence that a base tan provides any protection against premature aging of the skin or reduces the risk of skin cancer (cumulative UV exposure is likely to increase rather than decrease the risk of skin cancer) (Ref. 10).

B. Risks Posed by the Device

As stated previously, the original classification panels identified four risks to health associated with UV lamps. After considering the deliberations of the original reclassification panels mentioned in this document, the deliberations of a March 2010 General and Plastic Surgery Advisory Panel meeting on UV lamps for tanning, and published literature, FDA has determined that the risks to health listed in this document are associated with sunlamp products. The proposed special controls and forthcoming proposed amendments to the performance standard address these risks:

1. *Increased Skin Cancer Risk From Cumulative Repeated UV Radiation Exposure:* UV radiation exposure can lead to permanent damage to DNA in the skin, which has been shown to lead to an increased risk of skin cancer (Refs. 11 and 12). Skin cancers that have been associated with cumulative repeated UV radiation exposure include melanoma and non-melanoma skin cancers such as basal cell carcinoma and squamous cell carcinoma (Ref. 13). The risk may be higher in certain individuals with fairer, less pigmented skin, but can also be elevated in other individuals (Ref. 14). In addition to users with a personal history of melanoma having an increased risk of skin cancer, users with familial melanoma are also at increased risk for skin cancer—having one first-degree relative with melanoma doubles the risk of melanoma (Refs. 15 and 16). As with other radiation exposure, increased cumulative lifetime exposure results in increased skin cancer risk (for both melanoma and non-melanoma skin cancer) (Ref. 17).

There is increasing epidemiological evidence that tanning in childhood to early adult life increases the rate of melanoma (Refs. 18 and 19). Melanoma (of the two categories of skin cancer, this is the more concerning type due to greater potential for fatality) is currently the second leading type of cancer in young adults, and many experts believe that at least one cause for this is the increasing use of sunlamp products by this population (Ref. 20). FDA is also concerned that youths and adolescents may fail to appreciate the long-term dangers of sunlamp products (Refs. 21 and 22). The WHO has classified UV radiation from sunlamps as a class I carcinogen based on a 2009 International Agency for Research in Cancer (IARC) report that linked tanning bed use by individuals under age 35 to higher rates of melanoma and recommended that minors not use indoor tanning equipment (Ref. 23). This concern has led several states and one county in the United States, and several foreign governments, to ban the use of sunlamps by minors under a certain age (Refs. 24 and 25).

2. *Ocular Injury:* UV and visible radiation from this device can be harmful to the eyes if proper protective eyewear is not worn.[1] The intense light from sunlamps can cause keratitis and corneal burns, which can be painful and affect vision (Ref. 26). Artificial UV radiation has also been recently linked to ocular melanoma, which can cause vision loss and often spreads to other parts of the body (Ref. 27).

3. *Discomfort, Pain, and Tenderness on the Skin Resulting From Burns to the Skin due to Acute Overexposure to UV Radiation:* A recent evaluation showed that, despite protective measures instituted in commercial tanning facilities, 66 percent of female college-age users reported skin erythema (or redness due to sunburn) from indoor tanning, and these users reported one episode of sunburn out of every five tanning sessions (Ref. 28). Those findings are in line with a previous report that 58 percent of adolescent

[1] Ocular risks are addressed by labeling and performance requirements regarding eyewear at § 1040.20.

tanning bed users had experienced sunburns from exposure to sunlamps (Ref. 29). In certain individuals who are photosensitive, skin exposure to UV radiation may induce unexpected reactions such as rash, severe burns, and hypersensitivity reactions (Ref. 30). Sunlamps, like most light sources, also generate heat that can cause thermal skin burns, similar to any hot surface. Individuals with open wounds or lesions are particularly susceptible to burns from UV light because those individuals lack the protective epidermal layer of the skin that provides the body's greatest protection from UV irradiation (Ref. 31).

4. *Skin Damage:* Cumulative, repeated exposure to UV radiation emitted by sunlamps may lead to accelerated aging of skin due in part to DNA and skin cell damage (Ref. 32). UV irradiation inhibits the production of collagen precursor molecules such as type I and type III procollagen (Ref. 33). UV irradiation stimulates skin metalloproteinases, which break down skin proteins that then lead to photoaging (Ref. 34). On a cellular level, UV radiation has been known to cause DNA damage through formation of thymidine cyclobutane dimers and via oxidative damage as a result of UV generated superoxide radicals (Ref. 11).

5. *Lack of Biocompatibility*: Device materials that are not biocompatible may, either directly or through the release of their material constituents, (i) Produce adverse local or systemic effects, (ii) be carcinogenic, or (iii) produce adverse reproductive and developmental effects. Although medical devices may have myriad biocompatibility issues (Ref. 35), the biocompatibility concerns from sunlamp products are likely limited to inflammatory skin reactions from contact with the materials from which the bed is made.

6. *Transmission of Infectious Diseases Due to Improper Cleaning and Disinfection:* This is a concern for any reusable device. Sunlamp products in an indoor tanning facility may be shared by dozens of users in a single day. Cleaning and disinfection practices, as well as training by facility operators, may vary from facility to facility. Because sunlamp product users directly contact the device with their skin, users with open wounds or lesions have the potential to transmit infectious diseases to subsequent users if the device is not properly disinfected between users.

7. *Electrical Shock:* Electrical shock hazards can pose a potential hazard to both operators and users. These are commonly caused by manufacturing defects or are the result of frequent use (*e.g.,* frayed wiring and broken connectors) (Ref. 36).

8. *Mechanical Injury:* Sunlamp products can pose a threat of blunt force injury or entrapment of a user due to the heavy and bulky nature of some of these devices and the fact that users are completely inside a tanning bed or booth during use. Such injuries and entrapment may result from manufacturing defects and may be exacerbated by frequent use.

9. *Use Error:* All of the risks discussed in this document may be exacerbated by human error. Human error can include misuse by the individual using the sunlamp to obtain a tan, including not wearing the correct eye protection, setting the exposure timer for longer than the recommended time in the exposure schedule for the individual's skin type or skin acclimatization, use by individuals who should not be exposed to the sunlamp, and not following the warnings and cautions. Use error also includes errors by the sunlamp product operator (for example, if used at an indoor tanning facility). These would include improper maintenance of fixtures leading to electrical shock or contaminated bed surfaces, improper maintenance or selection of lamps leading to overexposure, and incorrect use of timer according to recommended exposure schedule.

V. 2010 Classification Panel Meeting

On March 25, 2010, FDA held a General and Plastic Surgery Advisory Panel meeting on UV lamps for tanning (Ref. 37). The Panel reviewed and discussed recent information, including recent literature regarding the possible risks to the general public from intentional exposure to sunlamp products.

There is a growing body of literature showing an association of skin cancer with use of sunlamp products (Refs. 38 to 53), and the Panel discussed this information and other information related to the association of UV and skin cancer (both melanoma and non-melanoma) (Ref. 36). The Panel discussed whether changes to the current classification or current regulatory controls of UV-emitting devices (lamps) used for tanning are needed. The Panel generally agreed that stricter FDA regulation of these devices is necessary to control the serious risks they pose and unanimously agreed that the device should not be a class I device. No significant changes in risks relating to sunlamp products have been identified in the scientific literature since the 2010 panel meeting; the same risks identified prior to the 2010 panel meeting continue to be presented in literature.

The following summarizes some of the Panel members' responses to the questions posed and the Panel members' views related to a variety of measures that may be necessary to provide a reasonable assurance of safety and effectiveness:

- Regarding reclassification, there was general Panel consensus that UV lamps for tanning should not be class I devices. The Panel, however, appeared to be split on whether UV lamps for tanning should be reclassified into class III or class II in light of the risks they pose. Some Panel members believed that UV lamps for tanning should be reclassified into class III. Other Panel members recommended that UV lamps for tanning be classified as class II, and felt that special controls and/or restrictions related to, for example, age, skin type, and cancer risk, would mitigate the risks associated with the use of these devices and would provide a reasonable assurance of safety and effectiveness. A few Panel members discussed banning UV lamps for tanning. No Panel member recommended leaving these devices in class I.
- Regarding the user's age, some Panel members favored an age restriction for indoor tanning (*i.e.,* individuals under a certain age would not be permitted to use UV lamps for tanning), and agreed that the cutoff age should be 18.
- Some Panel members recommended that individuals with a genetic predisposition or family history of skin cancer should be subject to special restrictions (*e.g.,* education requirements) prior to using UV lamps for tanning because they were at a greater risk for developing skin cancer than the general population.
- Some Panel members recommended that users of UV lamps for tanning should have to read a form disclosing the risks related to UV lamps for tanning and acknowledge receipt of this information in writing prior to using the device. Panel discussion points for the disclosure of risk form related to topics such as genetic history, past history of melanoma, and usage in pregnancy. Some Panel members also supported more prominent posting of risks and warnings.

Docket No. FDA–2009–N–0606 was opened to receive comments on the regulation of sunlamp products (75 FR 1395; January 11, 2010). The majority of the input received via the open public docket supported strengthening FDA's regulation of these devices. Although many comments did not expressly

specify whether regulation of sunlamps should be strengthened or not, because most of these were related to the experiences of people with melanoma, FDA interpreted them to be in support of stricter regulation of sunlamps. Six comments of 139 total comments took the position that FDA should not change its current regulation of indoor tanning devices. Overall, the docket comments strongly paralleled the opinions of the Panel members.

VI. Proposed Reclassification

Based on the comments from the 2010 reclassification panel, the comments received in the docket, and FDA's assessment of new, valid scientific data related to the health benefits and risks associated with sunlamp products, FDA is proposing that sunlamp products be reclassified from class I (general controls) to class II (special controls) because general controls alone are insufficient to provide reasonable assurance of safety and effectiveness, and there is sufficient information to establish special controls to provide such assurance. FDA is not proposing to classify these devices in class III at this time because special controls can provide a reasonable assurance of safety and effectiveness.

The proposed special controls for this device—identified as follows (and underlined)—are necessary to provide a reasonable assurance of safety and effectiveness for this device. Failure to comply with the special controls that are included in a final order would cause a sunlamp product to fall outside this classification, and thus be classified in class III. Failure to obtain premarket approval of a class III device prior to marketing causes the device to be adulterated under section 501(f) of the FD&C Act (21 U.S.C. 351(f)).

(1) *Conduct performance testing that demonstrates the following:*

i. *Sunlamp products meet appropriate output performance specifications such as wavelengths, energy density, and lamp life; and*

ii. *Safety features, such as timers to limit UV exposure and alarms, function properly.*

Performance testing would have to demonstrate the appropriateness of sunlamp product output performance specifications, that the device performs within such specifications, and proper functioning of safety features such as timers and alarms. This requirement would mitigate the risks of skin cancer, discomfort, pain, and tenderness resulting from burns to the skin due to acute and/or cumulative overexposure to UV radiation, and skin damage by providing assurance that the output of the device is as expected and within appropriate parameters, and users are not unintentionally exposed to excessive radiation.

All performance testing and results must also be in conformance with the performance standard at § 1040.20.

(2) *Demonstrate that sunlamp products are mechanically safe to prevent user injury.*

Mechanical safety testing, such as cyclic fatigue testing and strength and materials testing, would help to ensure that the device's mechanical features can withstand multiple uses and are sufficiently durable so as not to injure users in the event of a failure of a mechanical feature.

(3) *Demonstrate software verification, validation, and hazard analysis.*

Appropriate software verification, validation, and hazard analysis would help to ensure that the software-controlled device functions (such as the timer, alarms, and basic functions like powering on and off) are in proper working order. This requirement would mitigate increased skin cancer risk from cumulative repeated UV radiation exposure, discomfort, pain, and tenderness resulting from burns to the skin due to acute overexposure to UV radiation, skin damage, and use error by helping to ensure a proper software/user interface and that proper instructions are provided to the operator in software outputs.

(4) *Demonstrate that sunlamp products are biocompatible.*

The biocompatibility of sunlamps would have to be demonstrated. Sunlamp products contact users' skin directly; therefore, a demonstration of biocompatibility would mitigate the risks of adverse local or systemic effects such as skin inflammation.

(5) *Demonstrate that sunlamp products are electrically safe and electromagnetically compatible in their intended use environment.*

The requirement to demonstrate electrical safety would mitigate the risks of electrical shock hazards for sunlamp product operators and users. The requirement to demonstrate electromagnetic compatibility would, in concert with other special controls, help ensure the mitigation of discomfort, pain, and tenderness resulting from burns to the skin due to acute overexposure to UV radiation by preventing electromagnetic interference with sunlamp hardware and software.

(6) *Labeling must bear all information required for the reasonable assurance of safe and effective use of the device. (Please see proposed 21 CFR 878.4635(b)(6)).*

These labeling requirements would help to discourage use of sunlamp products by those populations that are especially susceptible to the risk of skin cancer—persons under the age of 18 and persons with a prior personal history or family history of skin cancer. When combined with the labeling requirements of the sunlamp performance standard in § 1040.20, this labeling would help clearly communicate the risks of skin cancer to all users. A warning directing users of this device who are repeatedly exposed to sunlamp products to be regularly evaluated for skin cancer would help to clearly communicate the increased risk of skin cancer from cumulative UV radiation exposure and help to mitigate that increased risk. Clear communication of these risks and identification of susceptible populations would help potential users make an informed choice about use of sunlamp products and mitigate the increased risk of skin cancer from cumulative UV radiation exposure in all users by encouraging judicious use of these devices. This labeling would also help to mitigate other risks of use of sunlamp products, including discomfort, pain, and tenderness resulting from burns to the skin due to acute overexposure to UV radiation.

Transmission of infectious diseases due to improper cleaning and disinfection would be mitigated through the requirement to provide instructions for cleaning and disinfection of the device that have been validated for use with the sunlamp product they accompany, and a warning that the device not be used if skin lesions or open wounds are present. The contraindication against use if skin lesions or open wounds are present would also help to mitigate the risk of discomfort, pain, and tenderness resulting from burns to the skin due to acute overexposure to UV radiation by discouraging users who are particularly susceptible to this risk due to a lack of critical epidermal protection from using sunlamp products.

The requirement to provide labeling that contains all necessary information for safe and effective use of a sunlamp product would help mitigate use error as well as ocular injury by instructing users to wear protective UV eyewear at all times when using the device.

VII. Premarket Notification

Class II devices are subject to the 510(k) premarket notification requirement unless exempted under section 510(m) of the FD&C Act. Under this proposed reclassification, the Agency does not propose to exempt

these devices from premarket notification (510(k)) submission requirements as provided for under section 510(m) of the FD&C Act. The premarket notification requirement allows the Agency to review the technological characteristics, performance, intended use(s), and labeling of medical devices to ensure the devices are substantially equivalent to legally marketed predicate devices before they enter the market. Substantial equivalence requires that a new device must have (1) the same intended use as legally marketed predicates, and (2) either the same technological characteristics as a legally marketed predicate, or if there are significant differences, the differences must not raise new questions of safety and effectiveness and the performance data must demonstrate that the new device is at least as safe and effective as the legally marketed predicate device. (See section 513(i) of the FD&C Act.) This assures that new devices that differ significantly in terms of safety and effectiveness from devices already legally on the market will be subject to the more rigorous premarket approval requirement.

As discussed previously, FDA cleared several 510(k)s for sunlamp products prior to the issuance of the 1994 final rule exempting them from premarket notification submission. At least one 510(k) for a sunlamp product has been cleared since then under product code LEJ. These cleared sunlamp products can serve as predicates for substantial equivalence purposes.

VIII. Implementation Strategy

FDA is proposing the implementation strategy as follows regarding 510(k) submission and special controls compliance:

- Sunlamp product models that have not been marketed prior to the effective date of a final order based on this proposal, or have been marketed but are required to submit a new 510(k) under § 807.81(a)(3) because the device is about to be significantly changed or modified:[2] FDA would expect manufacturers of these devices to obtain 510(k) clearance and comply with all special controls before marketing the new or changed device.
- Sunlamp product models that have been marketed prior to the effective date of a final order based on this proposal: FDA would expect manufacturers to either submit a 510(k) and comply with all special controls within 1 year of the effective date of a final order, or cease marketing that model. During the 1 year following the effective date of the final order, FDA intends to exercise enforcement discretion while manufacturers prepare and submit their 510(k). FDA would expect sunlamp products marketed during the 1 year period to comply with all special controls by the time the period expires.
- Individual sunlamp products that have been shipped to operators or users such as salons and individual consumers *before* the effective date of a final order: FDA would expect manufacturers to provide updated labeling that complies with the labeling special controls in proposed § 878.4635(b)(6) (21 CFR 878.4635(b)(6)) to operators or users within 1 year of the effective date of a final order.

[2] See FDA's guidance, "Deciding When to Submit a 510(k) for a Change to an Existing Device." (available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm080235.htm*). for additional guidance on whether a device change or modification requires a 510(k) submission.

IX. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Paperwork Reduction Act of 1995

This proposed order refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120 and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

In addition, FDA concludes that the labeling statements in proposed § 878.4635(b)(6)(i), (b)(6)(iii), and (b)(6)(iv) do not constitute a "collection of information" under the PRA. Rather, the labeling statements are "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public." (5 CFR 1320.3(c)(2)).

XI. Proposed Effective Date

FDA proposes that any final administrative order based on this proposal become effective 90 days after its date of publication in the **Federal Register**. Please see section VIII, "Implementation Strategy," for projected dates by which FDA will expect 510(k) submissions and conformance to special controls.

XII. Comments

Interested persons may submit either electronic comments regarding this order to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). FDA is explicitly seeking comment on the following issues:

- Whether FDA should consider additional special controls or other regulatory requirements to mitigate the risks posed by sunlamp products.
- FDA's proposed implementation strategy. In particular, what is the most practical method for manufacturers of devices currently on the market to conform to the labeling special control in proposed § 878.4635(b)(6) before 1 year after the effective date of the final order?

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

XIII. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this proposed order, we are proposing to revoke the requirements in § 878.4635 related to the classification of UV lamps for tanning as class I devices and to codify the reclassification of sunlamp products into class II.

XIV. References

FDA has placed the following references on display in the Division of Dockets Management (see **ADDRESSES**). Interested persons may see them between 9 a.m. and 4 p.m., Monday through Friday, and online at *http://www.regulations.gov*. (FDA has verified all the Web site addresses in this

reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4635 is revised to read as follows:

§ 878.4635 Sunlamp product.

(a) *Identification.* An electronic product that includes one or more ultraviolet (UV) lamps and a fixture intended for irradiation of any part of the living human body, by UV radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. This definition includes tanning beds, tanning booths, and UV lamps (bulbs) sold separately.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Conduct performance testing that demonstrates the following:

(i) Sunlamp products meet appropriate output performance specifications such as wavelengths, energy density, and lamp life; and

(ii) Safety features, such as timers to limit UV exposure and alarms, function properly.

(2) Demonstrate that sunlamp products are mechanically safe to prevent user injury.

(3) Demonstrate software verification, validation, and hazard analysis.

(4) Demonstrate that sunlamp products are biocompatible.

(5) Demonstrate that sunlamp products are electrically safe and electromagnetically compatible in their intended use environment.

(6) Labeling must bear all information required for the reasonable assurance of safe and effective use of the device.

(i) The warning statement below must appear on all sunlamp product fixtures. This statement must be permanently affixed or inscribed on the product when fully assembled for use so as to be legible and readily accessible to view by the person who will be exposed to UV radiation immediately before the use of the product. It shall be of sufficient durability to remain legible throughout the expected lifetime of the product. It shall appear on a part or panel displayed prominently under normal conditions of use so that it is readily accessible to view whether the tanning bed canopy (or tanning booth door) is open or closed when the person who will be exposed approaches the equipment and the text shall be at least 10 millimeters (height). Labeling on the device must include the following statement:

"Attention: This sunlamp product should not be used on persons under the age of 18 years."

(ii) Manufacturers of sunlamp products shall provide or cause to be provided in the user instructions for a sunlamp product as well as all catalogs, specification sheets, and descriptive brochures intended for consumers in which sunlamp products are offered for sale, and on all consumer-directed Web pages on which sunlamp products are offered for sale, the following contraindication and warning statements:

(A) "Contraindication: This sunlamp product is contraindicated for use on persons under the age of 18 years."

(B) "Contraindication: This sunlamp product must not be used if skin lesions or open wounds are present."

(C) "Warning: This sunlamp product should not be used on individuals who have had skin cancer or have a family history of skin cancer."

(D) "Warning: Persons repeatedly exposed to ultraviolet sunlamp products should be regularly evaluated for skin cancer."

(iii) Manufacturers of sunlamp products shall provide validated instructions on cleaning and disinfection of sunlamp products between uses in the user instructions.

(c) Sunlamp products are subject to the electronic product performance standard at § 1040.20 of this chapter.

Dated: May 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–10982 Filed 5–6–13; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Pacific Ocean Off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations to establish a new danger zone in waters of the Pacific Ocean off the Kekaha Range Facility, Barking Sands, Island of Kauai, Hawaii. The proposed amendment is necessary for the Hawaii Army National Guard to continue small arms training operations at the Kekaha Range Facility and to protect the public from potentially hazardous conditions which may exist as a result of that use. The proposed amendment would prohibit, on an intermittent basis, vessels from entering a six mile wide section of the Pacific Ocean that narrows to a 0.7 mile wide section along the shoreline fronting the Kekaha Range Facility without first obtaining permission from the Commanding Officer of Kekaha Range Facility.

DATES: Written comments must be submitted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number COE–2013–0004, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number COE–2013–0004, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2013–0004. All

comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Farley Watanabe, Corps of Engineers, Honolulu District, Regulatory Branch, at 808–835–4305 or by email at *farley.k.watanabe@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to establish a new danger zone in waters of the Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii.

The Corps authority to establish this danger zone is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend the regulations at 33 CFR part 334 to establish a new danger zone in the waters of the Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the establishment of this danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1395 to read as follows:

§ 334.1395 Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) *The danger zone.* All waters within the area bounded by a line connecting the following coordinates: beginning at a point on the shore at latitude 21°58′45″ N, longitude 159°45′32″ W; thence easterly along the shoreline (shoreline is defined as the mean high water line and is coterminous with the federal property line) to a point at latitude 21°58′33″ N, longitude 159°44′57″ W; thence southeasterly to a point at latitude 21°55′39″ N, longitude 159°43′36″ W; thence northwesterly to a point at latitude 21°57′50″ N, longitude 159°48′54″ W; thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) *The regulations.* (1) Weapons firing at the Kekaha Range Facility (KRF) may occur at any time between 7 a.m. and 6 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the KRF Facility Manager, NGHI–OPS–TNG (G3) at 808–844–6731.

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and

widely separated locations on the shore at the KRF.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at the KRF.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is in progress. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is in progress, the boater will be personally requested to expeditiously vacate the danger zone by KRF personnel hailing the vessel on VHF channel 16 or contacting the vessel directly by surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The enforcing agency.* The regulations shall be enforced by the Commanding Officer, Kekaha Range Facility, Hawaiian Area, Barking Sands, Kauai, Hawaii and such agencies or persons as he or she may designate.

Dated: May 3, 2013.

Approved:

James R. Hannon,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2013–11037 Filed 5–8–13; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

East Bay, St. Andrews Bay and the Gulf of Mexico at Tyndall Air Force Base, Florida; Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations by revising an existing restricted area regulation and establishing six new restricted areas along the Tyndall Air Force Base (AFB) facility shoreline. Tyndall AFB is surrounded on three sides by water with approximately 129 miles of unprotected coastline. This includes several areas where the lack of security or lack of restriction on access to these areas leaves Tyndall AFB personnel and resources vulnerable to unauthorized activities. This amendment is necessary to implement an enhanced security plan for Tyndall AFB, which includes four new permanent restricted areas and the ability to activate two additional restricted areas as local and national intelligence threat evaluations dictate.

DATES: Written comments must be submitted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number COE–2013–0003, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2013–0003, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2013–0003. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to establish four new permanent restricted areas in the waters surrounding Tyndall AFB to counter postulated threats against their personnel and equipment at those sites. Additionally, this regulatory action would establish two additional restricted areas which would be activated under conditions of heighten security risks and provide an administrative correction to the existing regulation at 33 CFR 334.660.

The Corps authority to establish these restricted areas is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to revise the regulations at 33 CFR part 334 by establishing a total of six new restricted areas in the waters surrounding Tyndall AFB. This amendment to the existing regulation will allow the Commander, Tyndall

AFB to restrict the passage of persons, watercraft, and vessels in waters contiguous to this facility thereby providing greater security for personnel and equipment. The administrative correction at 33 CFR 334.660(b)(3) will clarify who is responsible for enforcing the provisions of § 334.660.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the comment period, the Corps expects that the proposed rule would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and; therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. In § 334.660, revise paragraph (b)(3) to read as follows:

§ 334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.

* * * * *

(b) * * *

(3) The regulations in this section shall be enforced by the Installation Commander, Tyndall Air Force Base, Florida, and such other agencies as he/she may designate.

■ 3. Add § 334.665 to read as follows:

§ 334.665 East Bay, St. Andrews Bay and the Gulf of Mexico, Restricted Areas, Tyndall Air Force Base, (AFB), Fla.

(a) *The areas.* (1) The coordinates provided herein are approximations obtained using a commercial mapping program which utilizes Simple Cylindrical projection with a WGS84 datum for its imagery base and imagery dated January 1, 2012.

(2) The areas described in paragraphs (a)(3)(i) through (iv) of this section will have restricted access on a permanent basis while the areas described in paragraphs (a)(4)(iii) and (iv) of this section will be activated when the need for heighten security measures is anticipated.

(3) *Permanent Restricted Areas.* (i) *Military Point.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°07′23.23″ N, 85°37′36.91″ W thence directly to 30°07′27.97″ N, 85°37′38.45″ W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°07′17.91″ N, 85°37′04.04″ W thence proceeding directly to the mean high water line at approximately 30°07′19.02″ N, 85°37′09.60″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(ii) *Fred Bayou/Fuels Area.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°05′46.02″ N, 85°35′20.33″ W thence directly to 30°05′49.40″ N, 85°35′20.49″ W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°05′42.05″ N, 85°34′20.40″ W thence proceeding directly to the mean high water line at approximately 30°05′37.14″ N, 85°34′21.20″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iii) *Little Cedar Bayou/Flight Line.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°04′59.40″ N, 85°33′29.12″ W thence directly to 30°05′03.65″ N, 85°33′26.21″ W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°05′00.63″ N, 85°33′23.58″ W thence continuing in a westerly direction maintaining a standoff distance of 500 feet from the mean high water line to 30°04′59.82″ N, 85°33′18.40″ W thence proceeding directly to the mean high water line at approximately 30°04′55.88″ N, 85°33′21.79″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iv) *Silverflag/Baker Bayou.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°01′23.75″ N, 85°29′04.94″ W thence directly to 30°01′26.71″ N, 85°29′00.37″ W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°01′23.95″ N, 85°29′00.09″ W thence continuing in a westerly direction maintaining a standoff distance of 500 feet from the mean high water line to 30°01′22.35″ N, 85°28′54.04″ W thence proceeding directly to the mean high water line at approximately 30°01′20.13″ N, 85°29′02.21″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(4) *Enhanced Security Restricted Areas.* (i) Portions of the restricted areas described in paragraphs (a)(4)(iii) and (iv) of this section include barrier islands. Because of the dynamic nature of these geographic features the coordinate points provided may not reflect the current situation regarding the location of a point at the mean high water line or 500 feet waterward of the mean high water line. Even if the landform has shifted, the intent of the area description will be enforced from the existing point at the mean high water line that is closest to that provided herein out to a point located 500 feet waterward of the mean high water line.

(ii) The regulations for the Enhanced Security Restricted Areas described in paragraphs (a)(4)(iii) and (iv) of this section will include the use of the term "Military Security Buffer." For the purposes of this regulation a Military Security Buffer is considered to be a 500 foot wide buffer area surrounding any United States owned or operated vessel anchoring or mooring within the active Enhanced Security Restricted Area.

(iii) *St. Andrew Bay and East Bay.* Unless otherwise noted, the boundary for the area described herein is determined by a line paralleling the shoreline at a distance of 500 feet waterward of the mean high water line which connects the coordinate points provided. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°05′30.53″ N, 85°40′39.00″ W thence directly to 30°05′35.44″ N, 85°40′39.64″ W, thence to 30°04′09.10″ N, 85°37′07.06″ W thence directly to 30°04′13.17″ N, 85°36′55.97″ W thence to 30°08′00.33″ N, 85°39′50.96″ W thence to 30°06′09.36″ N, 85°36′54.80″ W thence to 30°03′33.50″ N, 85°32′10.43″ W thence to 30°02′17.86″ N, 85°30′24.92″ W thence directly to 30°02′11.97″ N, 85°30′23.13″ W thence to 30°01′55.71″ N, 85°29′51.28″ W thence to 30°01′00.38″ N, 85°27′59.87″ W thence to 30°01′13.92″ N, 85°26′54.47″ W thence proceeding directly to the mean high water line at approximately 30°01′09.00″ N, 85°26′55.00″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iv) *Gulf of Mexico and St. Andrew Sound.* Unless otherwise noted, the boundary for the area described herein is determined by a line paralleling the shoreline at a distance of 500 feet waterward of the mean high water line which connects the coordinate points provided. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 29°57′13.00″ N, 85°26′42.00″ W thence directly to 29°57′08.00″ N, 85°26′42.00″ W, thence to 29°57′56.43″ N, 85°28′29.36″ W thence to 29°59′02.13″ N, 85°30′05.21″ W thence directly to 29°59′09.05″ N, 85°30′10.25″ W thence to 30°03′07.93″ N, 85°35′01.75″ W thence to 30°05′13.12″ N, 85°40′40.00″ W thence proceeding directly to the mean high water line at approximately 30°05′18.00″ N, 85°40′39.00″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(b) *The regulations.* (1) *Permanent Restricted Areas.* (i) For the areas identified in paragraphs (a)(3)(i) through (iv) of this section, all persons, vessels and craft, including pleasure vessels and crafts (sailing, motorized, and/or rowed/towed or otherwise self-propelled), private and commercial fishing vessels, other commercial vessels, barges and all other vessels and craft, except vessels owned, operated or contracted by the United States and/or a Federal, State, or local law enforcement agency, are restricted from transiting, anchoring, trawling, dredging, drifting or attaching any object to the submerged sea-bottom within the above described Permanent Restricted Areas.

(ii) The Permanent Restricted Areas identified in paragraphs (a)(3)(i) through (iv) of this section are in effect 24 hours a day, 7 days a week.

(2) *Enhanced Security Restricted Areas.* (i) For the areas identified in paragraphs (a)(4)(iii) and (iv) of this section, a 500-foot Military Security Buffer is automatically placed around any vessel, owned or operated by the United States, which is anchored or moored within an active Enhanced Security Restricted Area. The Military Security Buffer will extend the Enhanced Security Restricted Area beyond the perimeter boundary limits described in paragraphs (a)(4)(iii) and (iv) of this section for as long as the Enhanced Security Restricted Area is active and the vessel is anchored or moored.

(ii) During times of heightened security threats against Tyndall AFB all persons, vessels and craft, including pleasure vessels and crafts (sailing, motorized, and/or rowed/towed or otherwise self-propelled), private and commercial fishing vessels, other commercial vessels, barges and all other vessels and craft, except vessels owned, operated or contracted by the United States and/or a Federal, State, or local law enforcement agency, are restricted from transiting, anchoring, trawling, dredging, drifting or attaching any object to the submerged sea-bottom within the above described Enhanced Security Restricted Areas or the 500-foot Military Security Buffer established around any United States owned or operated vessel when it is anchored or moored within the active Enhanced Security Restricted Area.

(iii) Due to the nature of these Enhanced Security Restricted Areas, closures may occur with little advance notice. Enhanced Security Restricted Areas will be activated based on local and national intelligence information related to threats against military installations and/or resources common to Tyndall AFB in concert with evaluations conducted by Tyndall AFB Threat Working Group and upon direction of the Installation Commander, Tyndall AFB. Public notification of Enhanced Security Restricted Area activation will be made via marine VHF broadcasts (channels 13 and 16), local notice to mariners, local news media through Air Force Public Affairs notifications and on-scene oral notifications.

(c) *Enforcement.* The regulations in this section shall be enforced by the Installation Commander, Tyndall AFB and/or such persons or agencies as he/she may designate. Military vessels may patrol the areas identified in paragraph (a) of this section at any time, 24 hours a day, 7 days a week. Any person or vessel encroaching within the permanent restricted areas or active Enhanced Security Restricted Areas identified in paragraph (a) of this section will be asked to immediately leave the area. Failure to do so may result in the issuance of a citation and/or the forceful removal of the person or vessel from the area in question.

Dated: May 3, 2013.

James R. Hannon,

Chief, Operations and Regulatory Directorate of Civil Works.

[FR Doc. 2013–11060 Filed 5–8–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2013–OESE–0062]

Proposed Priority and Requirements—Education Facilities Clearinghouse

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priority and requirements.

CFDA Number: 84.215T.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes a priority and requirements under the Education Facilities Clearinghouse program and may use one or more of the priority and requirements for competitions in fiscal year (FY) 2013 and later years. We intend to award funds under a cooperative agreement to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. We intend to establish a Clearinghouse to help stakeholders recognize the linkages between the school facility and three areas: Academic instruction, student and community well-being, and school fiscal health.

DATES: We must receive your comments on or before June 10, 2013. We encourage you to submit comments well in advance of this date.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email. To ensure we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "Education Facilities Clearinghouse" at the top of your comments.

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

Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed priorities and requirements, address them to the Office of Elementary and Secondary Education (Attention: Education Facilities Clearinghouse Grants-Comments), U.S. Department of Education, 400 Maryland Avenue SW., Potomac Center Plaza (PCP) Room 10073, Washington, DC 20202–6450.

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

FOR FURTHER INFORMATION CONTACT: Pat Rattler. Telephone: (202) 245–7893 or by email: *Pat.Rattler@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

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

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

During and after the comment period, you may inspect all public comments about this notice in Room 3W110, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

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

Purpose of Program: The purpose of the Education Facilities Clearinghouse is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities.

Program Authority: 20 U.S.C. 7131; 7243–7243b.

Background

The Education Facilities Clearinghouse is intended to assist States, local educational agencies (LEAs), and schools in creating safe, healthy, and high-performing education facilities by collecting and disseminating best practices for facilities planning, design, financing, procurement, construction, improvement, operation, and maintenance.

With this array of services, it is the Department's intent to use the Education Facilities Clearinghouse to assist education stakeholders in creating and sustaining higher quality environments for students, educators, and their communities. There is a growing body of research linking school facility quality to educational outcomes and documenting inequality in the distribution or quality of facilities:

- *Inequality in School Facilities:* There are significant inequalities in capital investment and in the availability of science labs, art rooms, music rooms, and gymnasiums between schools in low-income areas and schools in more affluent areas.[1]
- *Facilities and Health:* Air quality, acoustics, levels of thermal comfort, and lighting can affect the health and well-being of school occupants and have been linked in a small number of studies to student educational outcomes.[2]
- *Facilities and Communities:* School facilities affect students and their communities. School siting, size, efficiency, and design have implications for the community surrounding the school.[3]
- *Facilities and Behavior:* There is evidence of a link between various

[1] U.S. Department of Education: National Center for Education Statistics, Public School Principals' Perceptions of Their School Facilities: Fall 2005, NCES 2008–011 (Washington, DC: National Center for Education Statistics, 2008), retrieved April 2013.

[2] Earthman, G.I., C.S. Cash, and D. Van Berkum. 1995. "Student achievement and behavior and school building condition." Journal of School Business Management, 8(3): 26–37; and Shaughnessy, R., U. Shaughnessy, et al. 2006. "A preliminary study on the association between ventilation rates in classrooms and student performance." Indoor Air 16(6):465–468.

[3] "School Siting Guidelines," Environmental Protection Agency, accessed April 2013, *http://www.epa.gov/schools/siting/*.

aspects of a school's physical environment, on the one hand, and problematic student behavior in high schools and the retention of teachers across elementary and secondary schools, on the other hand.[4] [5]

With the proposed priority and requirements, we seek to build on the efforts we began with the FY 2010 Education Facilities Clearinghouse competition by clarifying the major goals of the Clearinghouse in order to address many of the concerns about the status of education facilities and by aligning this program with the Department's other initiatives relating to health and safety. One such initiative is the U.S. Department of Education's Green Ribbon Schools (ED–GRS) program.

Proposed Priority

This notice contains one proposed priority.

Proposed Priority—Establishment of the Clearinghouse

Background

With the proposed priority, we reaffirm the central purpose of the Clearinghouse, as stated in the notice inviting applications announced for the FY 2010 competition (75 FR 34441), and clarify the major goals of the Clearinghouse's core activities. The purpose of the Clearinghouse is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of elementary and secondary school facilities. The major goals we seek to address with this priority are: First, to highlight the role that school facilities might play in reducing education inequity and facilitating increased academic achievement; second, to better align the work of the Clearinghouse with the ED–GRS program; and, lastly, to preserve the role of the Clearinghouse in helping schools retrofit their facilities to increase security and student safety.

The ED–GRS program honors schools that are exemplary in three key areas: Reducing environmental impact and costs; improving the health and wellness of students and staff; and providing effective environmental and sustainability education, which incorporates science, technology, engineering and mathematics (STEM), civic skills, and green career pathways. To better align with the first two GRS–ED key activities, the proposed priority would direct the Clearinghouse to help education stakeholders understand how to use education facilities to improve community health and safety and student achievement, identify cost-saving opportunities, and increase the quality of school time spent outdoors. More information regarding the ED–GRS program can be found at *http://www2.ed.gov/programs/green-ribbon-schools/index.html.*

Proposed Priority

Establish a Clearinghouse to collect and disseminate research and other information on effective practices regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools in order to—

(a) Help education stakeholders increase their use of education facilities to turn around low-performing schools and close academic achievement gaps;

(b) Increase understanding of how education facilities affect community health and safety and student achievement;

(c) Identify potential cost-saving opportunities through procurement, energy efficiency, and preventative maintenance;

(d) Increase the use of education facilities and outdoor spaces as instructional tools and community centers (e.g., outdoor classrooms, school gardens, school-based health centers); and

(e) Increase capacity to identify hazards and conduct vulnerability assessments, and, through facility design, increase safety against hazards, natural disasters, and intruders.

Types of Priorities

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

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

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

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

Proposed Requirements

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Background

The following proposed requirements describe the four core activities of the Clearinghouse: Developing and maintaining a Web site to facilitate public access to electronic resources and research; developing resource materials and compiling best practices to assist in the creation of safe, healthy, and high-performing facilities; developing and implementing training programs for various education stakeholders; and providing direct, specialized technical assistance to schools and LEAs. With these requirements, we seek to clarify that the applicant must include in its application its plan to implement these four core activities.

Proposed Requirement 1—Establish and Maintain a Web Site

An applicant must include in its application a plan to establish and maintain a dedicated, easily-accessible Web site that will include electronic resources (e.g., links to published articles and research) about the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools. The Web site must be established within 120 days of receipt of the award and must be maintained for the duration of the project.

Proposed Requirement 2—Track and Compile Best Practices and Develop Resource Materials

An applicant must include in its application a plan to track and compile best practices at the State, LEA, and school levels and a plan to develop

[4] Buckley, Schneider, and Shang, The Effects of School Facility Quality on Teacher Retention in Urban School Districts. National Clearinghouse for Educational Facilities. February 2004. retrieved April 2013. *http://www.ncef.org/pubs/teacherretention.pdf.*

[5] Revathy Kumar, Patrick O'Malley, and Lloyd Johnston, "Association between physical environment of secondary schools and student problem behavior: A national study, 2000–2003," Environment and Behavior 40, no. 4 (2008): 455–486, retrieved December 2012 from DOI: 10.1177/0013916506293987.

resources that support the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools.

Proposed Requirement 3—Training

An applicant must include in its application a plan to develop and conduct at least two training programs per year for individuals in leadership positions (such as business or operations managers) in elementary or secondary schools or LEAs, who are responsible for the construction and or maintenance of elementary and secondary education facilities. Training topics must include information on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities in order to improve the capacity of elementary and secondary schools or LEAs to make quality decisions regarding safe, healthy, and high-performing elementary and secondary education facilities. Training must be conducted upon request by the Department, elementary and secondary schools, States, or LEAs, and must be conducted by appropriate Clearinghouse staff or contractors.

Proposed Requirement 4—Technical Assistance

An applicant must include in its application a plan to provide technical assistance, including a plan for providing on-site technical assistance to elementary schools, secondary schools, or LEAs, about issues related to the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested by these schools, LEAs, or the Department. On-site technical assistance visits will be conducted upon request by, or based on input from, the Department, elementary schools, secondary schools, or LEAs and must be completed using appropriate Clearinghouse staff or contractors. The Department must approve in advance all technical assistance visits.

The technical assistance must consist of consultation regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. Specific technical assistance topics may include information related to: assessing facilities and construction plans for energy efficiency; conducting vulnerability assessments; and developing written plans to retrofit education facilities to address identified hazards and security concerns. Technical assistance may also address low-cost measures that can be taken to enhance the safety and security of schools.

Final Priorities and Requirements

We will announce the final priorities and requirements in a notice in the **Federal Register**. We will determine the final priorities and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities and requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for

administering the Department's programs and activities.

These proposed priorities and requirements would benefit individual children by supporting the development and enhancement of safe, secure, and healthy school practices that would provide educators and stakeholders with timely and useful information to guide policy and decision making for education facilities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 3, 2013.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2013–10962 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–CURE–10079; 122PPIMCURES1–PPMPSPD1Z.YM0000]

RIN 1024–AD76

Special Regulations of the National Park Service, Curecanti National Recreation Area, Snowmobiles and Off-Road Motor Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend its special regulations for Curecanti National Recreation Area, Colorado, to designate routes, water surfaces, and areas where snowmobiles or motor vehicles may be used off park roads. Unless authorized by special regulation, the operation of snowmobiles and the operation of motor vehicles off road within areas of the National Park System are prohibited. The other existing special regulations for Curecanti National Recreation Area would remain in effect.

DATES: Comments must be received by July 8, 2013.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AD76, by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand delivery to:* Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230, Attn: Ken Stahlnecker, Chief of Resource Stewardship and Science.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For additional information, see Public Participation under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Ken Stahlnecker, Chief of Resource Stewardship and Science, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230. Phone: (970) 641–2337x225. Email: *ken_stahlnecker@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

History of Curecanti National Recreation Area

The Blue Mesa Dam and Reservoir, Morrow Point Dam and Reservoir, and Crystal Dam and Reservoir make up the Curecanti Unit, one of the four main units authorized by the Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84–485) (CRSPA). The Curecanti Unit is also known as the Wayne N. Aspinall Storage Unit.

Section 8 of CRSPA directed the Secretary of the Interior (Secretary) "to investigate, plan, construct, operate, and maintain (1) public recreational facilities on lands withdrawn or acquired for the development of [the Colorado River Storage Project] to conserve the scenery, the natural, historic, and archeological objects, and the wildlife on said lands, and to provide for public use and enjoyment of the same and of the water areas created by these projects by such means as are consistent with the primary purposes of said projects. . . ."

Pursuant to that provision, the National Park Service (NPS) began managing natural and cultural resources and recreational uses within Curecanti National Recreation Area (CURE) in 1965 under a Memorandum of Agreement (MOA) with the Bureau of Reclamation. In 1978, Bureau of Reclamation lands in the East Portal area were added to CURE and placed under the management authority of the NPS pursuant to the MOA.

Description and Significance of Curecanti National Recreation Area

CURE is located in Gunnison and Montrose Counties in southwestern Colorado. The reservoirs and the surrounding lands provide recreational opportunities amidst a variety of natural, cultural, and scenic resources, including recently discovered dinosaur fossils, a 5,000-acre archeological district, and traces of 6,000-year-old dwellings. Approximately one million people visit CURE annually to take advantage of numerous recreational opportunities. Most visitors come during the summer months when temperatures are warmer and water-based activities are more popular.

The recreation area contains water resources, including three reservoirs that provide a variety of recreational opportunities in a spectacular geological setting. Blue Mesa Reservoir is one of the largest high-altitude bodies of water in the United States. It provides an exciting diversity of water recreation opportunities for windsurfers, sail boaters, and water skiers.

Motor Vehicle and Snowmobile Use Off Road at Curecanti National Recreation Area

Visitors to CURE use motor vehicles to access campsites, fishing spots,

marinas, trailheads, and other destinations throughout the recreation area, both on and off roads. Motor vehicle access is also an important means for disabled or mobility impaired visitors to experience the recreation area.

Motor vehicles have traditionally been used to access certain sites within the recreation area, including areas below the high-water mark (i.e., where the water line would be if the reservoir is at full capacity) of Blue Mesa Reservoir (also known as Blue Mesa Lake). The high-water mark is defined as the point at which the reservoir is at maximum capacity (full pool), an elevation of 7,519 feet. NPS policy at the recreation area has been to allow the operation of motor vehicles between the high-water mark and the water surface of Blue Mesa Reservoir for the purpose of fishing access and boat launching. In addition, the NPS has designated several access roads that service power lines as routes open for motor vehicle access. Access to areas below the high-water mark is primarily from maintained roads. However, routes off established roads also provide access for travel below the high-water mark in a few areas. The most common motor vehicles that access these areas are cars and trucks. During the winter months, snowmobiles are often used to reach popular fishing locations on the frozen surface of Blue Mesa Reservoir. Snowmobiles access the frozen surface from designated access points.

Authority and Jurisdiction

1916 Organic Act

The NPS manages CURE under the NPS Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The Organic Act authorizes the Secretary to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks."

Resource Management

The purpose of the recreation area is to conserve its scenery, natural and cultural resources, and wildlife, and to manage its lands, waters, fish, wildlife, and recreational activities consistent with the MOA, section 8 of CRSPA, and the Federal Water Project Recreation Act (16 U.S.C 460(L)(12–21); Pub. L. 89–72; July 9, 1965 as amended).

Off-Road Motor Vehicle and Snowmobile Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, issued in 1972 and amended by Executive Order 11989 in 1977, required federal agencies to issue regulations designating specific areas and routes on public lands where the use of off-road vehicles may be used. NPS has implemented these Executive Orders in 36 CFR 2.18 and 4.10.

Under 36 CFR 4.10, the use of motor vehicles off established roads is not permitted unless routes and areas are designated for off-road motor vehicle use by a special regulation. Under 36 CFR 4.10(b), such routes and areas "may be designated only in national recreation areas, national seashores, national lakeshores and national preserves." Similarly, under 36 CFR 2.18, the use of snowmobiles is not permitted except on routes and water surfaces used by motor vehicles or motorboats during other seasons; routes and water surfaces must be designated for snowmobile use by special regulation.

The NPS is issuing this proposed rule to designate routes, water surfaces, and areas where motor vehicles and snowmobiles may be used off park roads, in compliance with 36 CFR 2.18 and 4.10 and Executive Orders 11644 and 11989.

Motorized Vehicle Access Plan/ Environmental Assessment

This proposed rule supports implementation of the preferred alternative (Alternative C) for CURE described in the October 2010 Motor Vehicle Access Plan/Environmental Assessment (EA). The EA was open for public review and comment from November 17, 2010 until January 15, 2011. CURE completed a Finding of No Significant Impact (FONSI) on July 10, 2012, which chose the preferred alternative (Alternative C) as the selected action. The EA and FONSI are available at *http://parkplanning.nps.gov/cure* by clicking the link entitled "Motorized Access Plan/Environmental Assessment" and then clicking the link entitled "Document List."

Under the selected action (the preferred alternative in the EA), motor vehicle use will be allowed only on routes above the high water mark and in areas below the high water mark of Blue Mesa Reservoir that are designated as open. To better preserve traditional access on routes above the high-water mark, the selected action will amend the 1997 General Management Plan to create a new Semi-Primitive/Motorized zone within and along the designated routes. This zone will include access routes to reservoir shoreline that have traditionally been used by the public. Desired conditions for routes in the Semi-Primitive/Motorized zone will be the same as those for the adjacent Semi-Primitive/Non-Motorized zone, except public motor vehicles will be allowed. This will result in a predominantly natural-appearing landscape with abundant natural sights and sounds and a limited number of unpaved motorized travel routes.

Visitor activities will be limited in the Semi-Primitive/Motorized zone as no services or recreational facilities will be provided. Encounters with other vehicles and visitors will be possible. This zone will include the power line access road and associated spur routes to the shoreline on the south side of Blue Mesa Reservoir, and certain administrative routes. As a result, there will be approximately 24 miles of traditionally used routes open to public motor vehicle access.

The selected action includes approximately 4.9 miles of routes on lands adjacent to CURE administered by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). These lands are identified for future NPS management in the August 2008 Final Resource Protection Study/ Environmental Impact Statement (RPS/ EIS), available at *http://parkplanning.nps.gov/cure* then clicking on the link entitled "Curecanti Resource Protection Study" and then clicking on the link entitled "Document List." These routes are currently open to public motor vehicle use under BLM and USFS management plans and connect to access routes within the boundary of CURE. Because the use of motor vehicles on these routes was analyzed by the EA and included in the FONSI, no future compliance under the National Environmental Policy Act of 1969 (NEPA) would be required to designate these areas as open to motor vehicles. However, the NPS cannot designate these routes as open to motor vehicles until it gains administrative jurisdiction over the lands where they are located, which requires Congressional action. Congress is currently considering a bill that would transfer administrative jurisdiction over these lands to the NPS. If this bill is enacted into law prior to publication of the final rule, the NPS would designate these routes as open to motor vehicles in the final rule. Therefore, the NPS invites public comment on this proposed action as part of this rule.

Below the high-water mark of Blue Mesa Reservoir, the NPS will designate a maximum area of approximately 958 acres traditionally used by the public as open to motor vehicle access. The actual number of acres accessible by motor

vehicles at any particular time will depend upon the water level of the reservoir. The remaining area (a maximum area of approximately 7280 acres) below the high-water mark, that has not traditionally been used by motor vehicles due to access limitations caused by terrain or reservoir levels, will not be open to vehicular use in order to protect known and unknown resources, including cultural sites. Pedestrian access will continue to be permitted in these areas, except when and where resource closures may be in effect. The selected action retains traditional access in the recreation area by keeping the most commonly used routes and areas open to public motor vehicle access.

Under the selected action, three new snowmobile access points will be designated in addition to the currently designated access points and routes: one at the Lake Fork Visitor Center boat ramp; one on the southeast shore of Iola Basin near Willow Creek; and one in the McIntyre Gulch area. The selected action meets all objectives of the EA, best retains traditional motor vehicle access, and provides the highest level of protection for known and unknown cultural resources.

Proposed Rule

This proposed rule would amend the special regulations for CURE at 36 CFR 7.51 to implement the selected action in the FONSI (the preferred alternative in the EA). The rule would designate frozen recreation area water surfaces where snowmobiles may be used, designate new access points, and designate routes from the access points to the frozen surface of the Blue Mesa Reservoir. The rule would also designate routes and areas where motor vehicles may be used off park roads within the recreation area, and access routes at various locations throughout the park. The rule does not address management of snowmobiles on USFS lands identified for future NPS management in the RPS/EIS.

Snowmobiles

Under this rule, section 7.51(c) would be amended to modify the designated access routes and frozen water surface where snowmobiles may be used. Snowmobiles would continue to be permitted to operate on designated routes and areas within the boundaries of CURE provided their use conforms to the regulations governing the use of snowmobiles in 36 CFR 2.18 and applicable State laws. The rule would retain the frozen surface of Blue Mesa Reservoir as a designated area for snowmobile use and add specific designated access points and access routes to the reservoir. Routes would be designated for travel by snowmobiles from the access points to the frozen surface of Blue Mesa Reservoir. These access routes would be limited to the most direct route from the access points to the frozen surface. Traveling parallel to the reservoir, before accessing the frozen surface, would be prohibited. Routes may be marked where possible, but changing weather conditions and terrain often make posting routes difficult. The rule also would create three new snowmobile access points: one at the Lake Fork Visitor Center boat ramp; one on the southeast shore of Iola Basin near Willow Creek; and one near McIntyre Gulch. The new access points would reduce environmental impacts by shortening the distance some visitors travel over the frozen surface by snowmobile to fish. A map of the water surfaces and routes open to snowmobile use and designated access points would be available in the office of the Superintendent and on the park Web site.

Snowmobile gross weight would continue to be limited to a maximum of 1,200 pounds (machine and cargo). The snowmobile speed limit would remain 45 mph (36 CFR 2.18(d)(4)).

Off Road Vehicles

Paragraph 7.51(e) would be added to designate routes and areas where motor vehicles may be used off-road in the recreation area. Under 36 CFR 1.4, the term "motor vehicle" does not include snowmobiles. As a result, paragraph 7.51(e) would not apply to snowmobiles. Under this rule, the frozen surface of Blue Mesa Reservoir and a maximum area of approximately 958 acres of the exposed bed of Blue Mesa Reservoir would be designated areas for motor vehicle use. Approximately 24 miles of off-road routes would be designated open to public motor vehicle use. These routes would provide access to Blue Mesa Reservoir, other CURE lands, and to adjacent public lands. A map of areas and routes open to off-road motor vehicle use would be available in the office of the Superintendent and on the park Web site.

The provisions of 36 CFR Part 4, including state law adopted by 36 CFR 4.1, apply within the recreation area. Unless posted otherwise, the speed limit would be 15 mph for motor vehicles on all designated off-road routes and areas. Speed limits are implemented for visitor safety and to prohibit driving that may damage resources. The 45 mph speed limit for snowmobiles is higher than the 15 mph speed limit for motor vehicles, even though both would be allowed to travel on the frozen surface of Blue Mesa Reservoir, because snowmobiles are more easily controlled on snow and ice due to vehicle design and a lower center of gravity. As a result, there are less safety and resource concerns with driving snowmobiles in excess of 15 mph. Motor vehicle gross weight would be limited to a maximum of 1,800 pounds (machine and cargo) on the frozen surface of Blue Mesa Reservoir. This vehicle restriction is intended to allow only lightweight all-terrain vehicles (ATV) or utility task vehicles (UTV or sometimes referred to as a side-by-side) onto the frozen surface.

To prevent impacts to areas outside of existing routes, a maximum 8 feet, 6 inches wheel width (track) requirement would be implemented for motor vehicles on all designated routes. The NPS may also recommend, but not require, four-wheel drive and/or high-clearance vehicles on particular routes, based on visitor safety and route conditions.

Superintendent's Authority

Routes, water surface, areas, or access points designated for snowmobile, personal watercraft, or off-road motor vehicle use would be subject to year-round, seasonal, or temporary site-specific closures, conditions, or restrictions with notice provided pursuant to 36 CFR 1.7. The Superintendent's authority in § 7.51(d)(5), related to personal watercraft use, would be removed because it would be redundant with the Superintendent's authority in paragraph (f) of the proposed rule.

Economic Analysis

An analysis of the potential costs and benefits of the rule can be found in the report entitled "Summary of Economic Analyses" which is available at *http://parkplanning.nps.gov/cure* then clicking the link entitled "Motorized Access Plan/Environmental Assessment" and then clicking the link entitled "Document List."

Compliance With Other Laws, Executive Orders and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Orders 11644 and 11989)

Section 3(a)(4) of Executive Order 11644 provides that ORV "[a]reas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely

affect their natural, aesthetic, or scenic values." Since the Executive Order clearly was not intended to prohibit all ORV use everywhere in these units, the term "adversely affect" does not have the same meaning as the somewhat similar terms "adverse impact" and "adverse effect" used in NEPA. In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term "adverse effect" includes minor or negligible effects. Section 3(a)(4) of the Executive Order, by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. CURE is an area of the National Park System. Therefore, NPS interprets the Executive Order term "adversely affect" consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow "appropriate use" of parks and avoid "unacceptable impacts."

This rule is consistent with those requirements. It will not impede attainment of CURE's desired future conditions for natural and cultural resources as identified in the EA. NPS has determined that this rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural locations within CURE. Therefore, within the context of the resources and values of CURE, motor vehicle use on the routes and areas designated by this rule (which are also subject to resource closures and other species management measures that would be implemented under the preferred alternative in the EA) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of CURE.

Section 8(a) of the Executive Order requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of information gathered, agency heads shall from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the Executive Order. The preferred alternative (Alternative C) for the EA identifies monitoring and resource protection procedures and periodic review to provide for the ongoing and future evaluation of impacts of motor vehicle use on protected resources. The park Superintendent has the existing authority under both this final rule and 36 CFR 1.5 to close portions of CURE as needed to protect park resources.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. It directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the regulatory flexibility analysis found in the report entitled "Summary of Economic Analyses" which can be viewed on the park's planning Web site, *http://parkplanning.nps.gov/cure*, then clicking the link entitled "Motorized Access Plan/Environmental Assessment" and then clicking the link entitled "Document List."

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements, and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because we reached a FONSI. The EA and FONSI are available at *http://parkplanning.nps.gov/cure* then clicking the link entitled "Motorized Access Plan/Environmental Assessment" and then clicking on the link entitled "Document List."

Consultation with Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-

governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

However, park staff consulted with representatives from the Southern Ute Indian tribe, Uintah and Ouray Tribal Business Committee, Ute tribe of the Uintah and Ouray Reservation, and the Ute Mountain Ute tribe. The tribes have not commented or identified any concerns to date, though CURE will contact the tribes again when the EA and this proposed rule is published. If issues are identified in the future, section 6 of Executive Order 13175 and Executive Order 13007 permits the park to grant access to areas in CURE, which are otherwise closed, to the public to tribal members that may be affected by any changes developed under the EA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201.07 (2001).

■ 2. Amend § 7.51 by revising the introductory text of paragraph (c), revising paragraphs (c)(2) and (c)(3), removing paragraph (d)(5), and adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 7.51 Curecanti Recreation Area.

* * * * *

(c) *Snowmobiles.* Snowmobiles are permitted to operate within the boundaries of Curecanti National Recreation Area under the following conditions:

* * * * *

(2) *Designated water surface and routes.* Snowmobile use is confined to the following water surface and routes:

(i) The frozen surface of Blue Mesa Reservoir; and

(ii) Lake Fork Visitor Center access point, McIntyre Gulch access point, Sapinero Beach access point, Dillon Pinnacles access point, Windsurf Beach access point, Elk Creek Marina, Dry Creek access point, North Willow access point, Old Stevens access point, Iola access point, Willow Creek access point, and the most direct route from each of these access points to the frozen surface of Blue Mesa Reservoir.

(iii) The designated water surface and routes are identified on maps available at the office of the Superintendent, Elk Creek Visitor Center, Lake Fork Visitor Center, Cimarron Visitor Center, and on the Recreation Area Web site.

(3) *Snowmobile requirements.* Snowmobiles are limited to a maximum of 1200 pounds gross vehicle weight (GVW), including cargo.

* * * * *

(e) *Off-road motor vehicle use.* Motor vehicles are permitted to operate within the boundaries of Curecanti National Recreation Area off park roads under the following conditions:

(1) *Designated areas and routes.* Motor vehicle use off park roads is confined to the following areas and routes:

(i) Via the access points and routes listed in paragraph (c)(2)(ii) of this section, directly to the frozen surface of Blue Mesa Reservoir;

(ii) A maximum area of approximately 958 acres of the exposed lake bottom of Blue Mesa Reservoir between the high-water mark and the water of the reservoir; and

(iii) Posted access routes through the park.

(iv) These areas and routes are identified on Maps 6a and 6b, dated January 1, 2011, which are available at the office of the Superintendent, Elk Creek Visitor Center, Lake Fork Visitor Center, Cimarron Visitor Center, and on the Recreation Area Web site.

(2) *Vehicle requirements.* Motor vehicles operating off-road must meet the following requirements:

(i) Maximum wheelbase width must not exceed 8 feet, 6 inches.

(ii) Maximum gross vehicle weight for motor vehicle use on the frozen surface of Blue Mesa Reservoir is 1800 pounds GVW. This restricts vehicle use on the frozen surface to all-terrain and utility task vehicles.

(3) *Speed limits.* Unless otherwise posted, motor vehicles may not exceed 15 miles per hour on designated off-road routes and areas.

(f) *Superintendent's authority.* The Superintendent may open or close designated routes, water surfaces, access points, or areas open to snowmobile, PWC, or off-road motor vehicle use, or portions thereof, or impose conditions or restrictions for snowmobile, PWC, or off-road motor vehicle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(1) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(2) Violating a closure, condition or restriction is prohibited.

Dated: May 1, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–10979 Filed 5–8–13; 8:45 am]

BILLING CODE 4312–EJ–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2012–5]

Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: On June 14, 2012, the United States Copyright Office published a notice of proposed rulemaking and request for comments concerning a new regulation that will allow copyright owners to audit the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Copyright Office for secondary transmissions of broadcast programming made pursuant to statutory licenses. The Copyright Office has revised the proposed regulation based on comments that it received from copyright owners, cable operators, and satellite carriers. The Copyright Office seeks comments on the revised proposal before it is adopted as a final rule.

DATES: Comments on the revised proposal must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on June 10, 2013. Reply comments must be received in the Office of the General Counsel no later than 5 p.m. EDT on June 24, 2013.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *www.copyright.gov/docs/soaaudit/comments/submission/*. The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Portable Document Format (PDF) that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Erik Bertin, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111 and 119 of the Copyright Act ("Act"), title 17 of the United States Code, allow cable operators and satellite carriers to retransmit the performance or display of works embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission. In order to use the statutory licenses, cable operators and satellite carriers are required to file Statements of Account and deposit royalty fees with the Copyright Office ("Office") on a semi-annual basis. The Office invests these royalties in United States Treasury securities pending distribution of the funds to copyright owners who are entitled to receive a share of the royalties.

In 2010, Congress enacted the Satellite Television Extension and Localism Act of 2010 ("STELA"), Public Law 111–175 which, *inter alia*, directed the Register of Copyrights to develop a new procedure for verifying the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Office. Specifically, section 119(b)(2) directed the Register to "issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under [that] subsection." Similarly, section 111(d)(6) directed the Register to "issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to [section 111] of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph [111(d)(6)(A)] is able to confirm the correctness of the calculations and royalty payments reported therein."

On June 14, 2012, the Office published a Notice of Proposed Rulemaking and Request for Comments on a regulation that would implement sections 111(d)(6) and 119(b)(2) of the Copyright Act. *See* 77 FR 35643, June 14, 2012. The proposed regulation was based on similar regulations that the Office developed for parties that make ephemeral recordings or transmit digital sound recordings under 17 U.S.C. 112(e) and 114(f), respectively, or manufacture, import, and distribute digital audio recording devices under 17 U.S.C. chapter 10. *See id.* at 35644. The Office also considered a Petition for Rulemaking, which offered proposals from a group of copyright owners who are the beneficiaries of the royalties paid under the statutory licenses ("Copyright Owners").[1]

The Office received comments on the proposed regulation from groups representing copyright owners, cable operators,[2] and individual companies that retransmit broadcast programming under section 111 or 119 of the Act, namely, AT&T, Inc., DIRECTV, LLC ("DTV"), and DISH Network L.L.C. ("DISH"). While the parties agreed on the overall framework that the Office proposed for the verification procedure, they strongly disagreed on a number of key issues, such as the procedures for selecting an auditor, for expanding the scope of the audit, and for allocating the cost of the verification procedure.

On August 24, 2012 and again on September 26, 2012, the National Cable & Telecommunications Association ("NCTA"), the Joint Sports Claimants, and the Program Suppliers submitted a joint motion to extend the deadline for submitting reply comments.[3] They

[1] The petition was filed on behalf of Program Suppliers (commercial entertainment programming), Joint Sports Claimants (professional and college sports programming), Commercial Television Claimants (local commercial television programming), Music Claimants (musical works included in television programming), Public Television Claimants (noncommercial television programming), Canadian Claimants (Canadian television programming), National Public Radio (noncommercial radio programming), Broadcaster Claimants Group (U.S. commercial television stations), and Devotional Claimants (religious television programming). A copy of the petition has been posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/soa-audit-petition.pdf*.

[2] The National Cable & Telecommunications Association ("NCTA") and the American Cable Association ("ACA") filed comments on behalf of cable operators.

[3] The NCTA is a trade association that represents cable operators. The Joint Sports Claimants represent copyright owners that produce professional and college sports programming. The Program Suppliers represent copyright owners that

Continued

explained that there might be common ground among the moving parties concerning certain aspects of the proposed regulation. If so, the moving parties stated that they might be able to narrow the issues that they discuss in their reply comments, which in turn, might narrow the issues that need to be resolved in this rulemaking. The Office granted these motions, making reply comments due by October 24, 2012. *See* 77 FR 55783, Sept. 11, 2012; 77 FR 60334, Oct. 3, 2012. In lieu of reply comments, NCTA, DIRECTV, and a group representing certain copyright owners[4] submitted a joint proposal for revising the proposed regulation (hereinafter the "Joint Stakeholders' Proposal").[5] The Joint Stakeholders stated that their Proposal adopts "the general framework" set forth in the Notice of Proposed Rulemaking and in other verification procedures that the Office has adopted in the past. They also stated that their Proposal has been "carefully tailored" to reflect "the unique characteristics of the cable and satellite compulsory licenses," and reflects "significant compromises by all parties with the objective of securing a workable set of audit procedures consistent with STELA." (Joint Stakeholders Reply at 2.)

The Office also received reply comments from AT&T. Although it was aware of the Joint Stakeholders' negotiations and the areas of agreement among the parties, AT&T explained that it was not in a position to endorse the Joint Stakeholders' Proposal, because it was not given a sufficient amount of time for "meaningful engagement" with the group. (AT&T Reply at 1.) Therefore, AT&T urged the Office to publish the Joint Stakeholders' Proposal "for further comment by other interested parties who were not parties to the agreement." *Id.*

The Office carefully reviewed all of the comments and reply comments that were submitted in this proceeding, including the Joint Stakeholders' Proposal.[6] The Joint Stakeholders' Proposal addresses most of the concerns that the parties raised in their initial comments, and for the most part, it balances those concerns in an appropriate manner. Therefore, the Office has incorporated most of the Joint Stakeholders' suggestions into the proposed regulation, which is referred to herein as the "Revised Proposal."

The Office recognizes that ACA, AT&T, DISH, the Broadcaster Claimants Group, the Commercial Television Claimants, and other interested parties did not participate in the Joint Stakeholders' negotiations. Because the Revised Proposal includes proposed changes offered by the Joint Stakeholders, the Office concludes that other interested parties should be given an opportunity to comment on the proposed regulation before the Office adopts a final rule. The Office also welcomes reply comments on the Revised Proposal from the Joint Stakeholders or other interested parties. Commenters should limit their remarks to issues raised by the Revised Proposal which were not discussed in the initial comments, the reply comments, or this **Federal Register** notice, while reply commenters should limit their remarks to the issues or concerns presented in the follow-up comments.

II. Areas of Common Agreement Among the Parties

Generally speaking, the parties agreed with the overall framework that the Office proposed for the audit regulation. They agreed that the Office should create a single verification procedure applicable to cable operators and satellite carriers alike. (*See* Copyright Owners at 3, 4, 8; DTV at 1–2.) They agreed that copyright owners should initiate a verification procedure by filing a notice of intent to audit with the Office, and that the notice must be received within three years after the last day of the year in which the licensee filed its Statements of Account. They agreed that the verification should be conducted by a certified public accountant, and that a single auditor should conduct the audit on behalf of all copyright owners (regardless of whether they decide to join the audit or not). (*See* AT&T at 2, 3; DISH at 8–9.) They agreed that satellite carriers and cable operators that own a single system should be subject to no more than one audit per year. They agreed that an audit involving a multiple system operator should be limited to a sampling of the systems owned by that entity. (*See* NCTA at 6.) They agreed that 30 days would be a sufficient amount of time for the auditor to consult with the statutory licensee's designee concerning the conclusions set forth in the initial draft of the auditor's report. They agreed that the auditor should be allowed to deliver his or her final report to the copyright owners without consulting with the statutory licensee if the auditor suspects that the licensee has engaged in fraud. They also agreed that statutory licensees should be required to retain records needed to confirm the correctness of the calculations and royalty payments reported in a Statement of Account for at least three and a half years after the last day of the year in which the Statement was filed with the Office. (*See* DISH at 7.)

III. Retroactivity

A. Comments

As discussed above, the Office received a Petition for Rulemaking on January 31, 2012, which was filed on behalf of groups that represent copyright owners (collectively "the Petitioners"). Among other things, the Petitioners urged the Office to establish separate procedures for verifying Statements of Account filed under section 111 and 119, and they provided the Office with draft regulations for audits involving cable operators and satellite carriers.

The Office did not adopt this approach in its Notice of Proposed Rulemaking. If the Office followed the Petitioners' recommendation, the regulation for cable operators would apply to Statements of Account for accounting periods beginning on or after January 1, 2010 (*i.e.*, the semiannual accounting period that was in effect when the President signed STELA into law on May 27, 2010), while the regulation for satellite carriers would apply to any Statement of Account, even if the Statement was filed before STELA was enacted. In other words, the regulation for satellite carriers would apply retroactively, while the regulation for cable operators would apply on a prospective basis only. *See* 77 FR 35645, June 14, 2012.

DTV agreed that the Office should "harmonize" the procedures for cable operators and satellite carriers, and noted that "there are strong policy reasons not to apply laws retroactively." (DTV at 2.) DISH agreed that the regulation should not apply to Statements of Account for accounting periods that pre-date STELA, and further asserted that the proposed regulation should apply only to

produce and/or syndicate movies, programs, and specials that are broadcast by television stations.

[4] This group includes the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Canadian Claimants Group, Devotional Claimants, National Public Radio, and Music Claimants. The Commercial Television Claimants and the Broadcaster Claimants Group did not join their fellow copyright owners in submitting this proposal.

[5] A copy of the Joint Stakeholders' Proposal has been posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/comments/reply/joint_stakeholders.pdf*. It includes a redline showing the differences between the Joint Stakeholders' Proposal and the proposed regulation set forth in the Notice of Proposed Rulemaking published on June 14, 2012.

[6] All of the comments and reply comments have been posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/comments/index.html*.

Statements of Account filed on or after the date that the final rule goes into effect. (DISH at 3.) While the Copyright Owners agreed that the Office should adopt a uniform procedure for both cable operators and satellite carriers, they contended that a regulation allowing for the verification of pre-2010 Statements of Account would not constitute a retroactive obligation. (Copyright Owners at 4.)

B. Discussion

The Revised Proposal would allow copyright owners to audit Statements of Account filed by cable operators and satellite carriers for accounting periods beginning on or after January 1, 2010. The Office has concluded that this would not be a retroactive regulation, even though it would apply to Statements for the 2010, 2011, and 2012 accounting periods.

A regulation is retroactive if it "takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." *National Mining Ass'n* v. *Dep't of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002). The fact that the regulation establishes a procedure for verifying Statements of Account filed before the date that the final rule goes into effect does not mean it is retroactive. *See Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 269–70 (1994) (a law is not considered retroactive "merely because it is applied in 'a case arising from conduct antedating the statute's enactment"). Instead, "the operative inquiry is 'whether the new provision attaches new legal consequences to events completed before its enactment.'" *Id.*

Neither DISH nor any other party has identified any aspect of the proposed regulation that changes the legal landscape for satellite carriers or cable operators. The regulation creates a framework for audits that will be conducted in the future, but it does not change the "past legal consequences of past actions" for a statutory licensee who may be subject to the verification procedure. *See National Petrochemical & Refiners Ass'n* v. *EPA*, 630 F.3d. 145, 161 (D.C. Cir. 2010). The regulation states that the auditor will review a Statement of Account to determine whether the licensee correctly calculated, reported, and paid the amount which was due. If the auditor discovers an error or underpayment, the licensee would be subject to the same legal obligations which would apply if the error had been discovered when the Statement was filed.[7] Moreover, cable operators and satellite carriers that use the statutory license knew that copyright owners would be entitled to audit Statements of Account following the enactment of STELA, and as such, were on notice that Statements filed on or after the effective date might be subject to this procedure. Indeed, some of the parties who submitted comments in this proceeding stated that they were "intimately" and "directly" involved in the negotiations that preceded the drafting of STELA. *See* DTV at 1–2; Refunds Under the Cable Statutory License, Docket No. RM–2010–3, Comments of National Cable & Telecommunications Association at 3 (available at *http://www.copyright.gov/docs/stela/comments/ncta-11-03-10.pdf*).

IV. Initiation of an Audit

A. Comments

In the Notice of Proposed Rulemaking the Office explained that a copyright owner could initiate an audit procedure by filing a notice with the Office, which would be published in the **Federal Register**. The copyright owner would be required to identify the Statement(s) of Account and accounting period(s) that would be included in the audit, and the statutory licensee that filed those Statement(s) with the Office. In addition, the notice would have to provide contact information for the copyright owner filing the notice, and a brief statement establishing that it owns at least one work that was embodied in a secondary transmission made by that licensee. A notice of intent to audit a particular Statement of Account would be considered timely if it is received within three years after the last day of the year in which that Statement was filed.

Any other copyright owner that wishes to participate in the audit would have to notify both the copyright owner that filed the notice of intent to audit and the statutory licensee who would be subject to the audit within 30 days after the notice was published in the **Federal Register.** Copyright owners that join in the audit would be entitled to participate in the selection of the auditor, they would be entitled to receive a copy of the auditor's report, and they would usually be required to pay for the auditor for his or her work in connection with the audit.[8] However, a copyright owner that failed to join the audit within the time allowed would not be permitted to participate in the selection of the auditor and would not be entitled to receive a copy of the auditor's report. Moreover, a copyright owner that failed to join the audit would not be permitted to conduct its own audit of the semiannual Statement(s) of Account identified in the **Federal Register** notice at a later time.

All of the parties agreed with this approach, although the Copyright Owners suggested that a group representing multiple copyright owners should be permitted to file a notice of intent to audit on behalf of the members of that group. (Copyright Owners at 4–5.)

B. Discussion

Generally speaking, the Revised Proposal follows the same approach for initiating an audit that the Office proposed in its Notice of Proposed Rulemaking. As the Copyright Owners suggested, the term "copyright owners" is defined to mean "a person or entity that owns the copyright in a work embodied in a secondary transmission made by a statutory licensee" or "a designated agent or representative of such person or entity." This will allow groups representing multiple copyright owners to file a notice of intent to audit, provided that the groups represent at least one party who owns a work which was embodied in a secondary transmission made by the statutory licensee during one or more of the accounting periods specified in the notice. It will also allow groups representing multiple copyright owners to prepare a list of qualified and independent auditors who may be selected to conduct the audit, to expand the scope of the audit if the auditor discovers an underpayment that exceeds a certain threshold, to prepare an itemized report documenting the cost of the audit, among other activities contemplated by the Revised Proposal.

V. Designation of the Auditor

A. Comments

In the Notice of Proposed Rulemaking, the Office suggested that the copyright owners should be solely responsible for selecting a qualified and independent auditor to conduct the

[7] The cases cited by DISH are distinguishable because they involve situations where "an agency completely reversed the status quo ante." *See Nat'l Petrochemical & Refiners Ass'n*, 630 F.3d at 160 (distinguishing *Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204 (1988) and *Nat'l Mining Ass'n* v. *Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002)). For example, in *Bowen* the agency required a party to return or forfeit money that it had received from the government. In *Marrie* v. *SEC*, 374 F.2d 1196 (D.C. Cir. 2004), the agency changed the legal standard needed to establish professional misconduct, and then applied that standard to conduct that occurred before the rule was adopted.

[8] These parties are defined in the Revised Proposal as the "participating copyright owner(s)."

verification, and that any disputes concerning the auditor's qualifications or independence should be resolved by the Professional Ethics Division of the American Institute of Certified Public Accountants ("AICPA") or the State Board of Accountancy that licensed the auditor while the audit is underway. Many of the parties disagreed with this approach.

The Copyright Owners predicted that this would lead to needless delay and expense. They stated that a statutory licensee should be required to raise any concerns about the auditor in a prompt manner, and that if the parties are unable to resolve their differences within 30 days, the auditor should be allowed to proceed with the verification. (Copyright Owners at 5.) AT&T agreed that any disputes concerning the qualifications or independence of the auditor should be resolved before the audit begins, and further stated that if the auditor is not qualified or independent, the statutory licensee should not be subject to any audits until the following year. (AT&T at 4; AT&T Reply at 2.) The NCTA stated that an auditor selected by the copyright owners could be biased in favor of his or her clients. To address these concerns, the NCTA suggested that both the copyright owners and the statutory licensee should designate a certified independent accountant, who, in turn, would select a neutral auditor to conduct the verification procedure. (NCTA at 4–5.)

Regarding the auditor's qualifications, AT&T agreed that the audit should be conducted by a certified public accountant who is in good standing with the AICPA. AT&T stated that the auditor should not be subject to any disciplinary inquiry or proceeding, that the auditor should not be allowed to collect a contingency fee based on the results of the audit, and that the auditor should be required to file a certification with the Office confirming his or her qualifications and independence before the audit begins. (AT&T at 3–4; AT&T Reply at 2.)

B. Discussion

The Revised Proposal addresses the parties' concerns regarding the selection of the auditor. Copyright owners who wish to participate in the audit would provide the statutory licensee with a list of three independent and qualified auditors, along with information that would be reasonably sufficient for the licensee to evaluate the independence and qualifications of each individual. Specifically, the copyright owners would provide the licensee with a copy of the auditor's *curriculum vitae,* a copy of the engagement letter that would govern his or her performance of the audit, and a list of any other audits that the auditor has conducted under this regulation. They would also provide a brief description of any other work that the auditor has performed for any of the participating copyright owners within the previous two calendar years, along with a list of the participating copyright owners who have engaged the auditor's firm within the previous two calendar years.

Within five (5) business days after receiving this information, the statutory licensee would be required to select one of these auditors. That individual would audit the licensee's Statements of Account on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by that licensee during the accounting period(s) subject to the audit.[9] To ensure that the auditor maintains his or her independence during the audit, the Revised Proposal explains that there may be no *ex parte* communications between the auditor and the participating copyright owners or their representatives until the auditor has issued his or her final report. However, there are two exceptions to this rule. The auditor may communicate directly with the copyright owners if he or she has a reasonable basis to suspect that the statutory licensee has committed fraud, or if the auditor gives the licensee an opportunity to participate in the communication and the licensee declines to do so.

In response to AT&T's concerns, the Revised Proposal states that the auditor must be a member in good standing with the AICPA and the relevant licensing authority for the jurisdiction(s) where the auditor practices,[10] and it states that the auditor must be compensated with a flat fee or based on an hourly rate, rather than a contingency fee.[11]

The Office declined to adopt AT&T's suggestion that the auditor should not be subject to "*any* disciplinary inquiry or proceeding." (AT&T at 3, emphasis added.) It is implicit that the auditor is not currently subject to a disciplinary inquiry or proceeding, because the regulation requires that the auditor must be a member in good standing with the relevant licensing authority and professional association for certified public accountants. In any event, it seems unlikely that the copyright owners would invite a "peremptory challenge" by nominating an accountant who is currently suspended or subject to a pending disciplinary inquiry or proceeding.[12] Likewise, the Office does not believe that the auditor should be required to file a certification with the Office concerning his or her qualifications and independence, because the Revised Proposal already directs the copyright owners to provide the statutory licensee with information that it reasonably needs to evaluate each auditor.

VI. Scope of the Audit and Time Period for Conducting an Audit

A. Comments

The Notice of Proposed Rulemaking did not specify a precise deadline for when the audit should begin or when the audit should be completed, because the Office expects that the issues presented in each audit will vary depending on the number and complexity of the Statements of Account that will be subject to review. For the same reason, the Office did not specify the precise issues that the auditor should consider in each audit. Instead, the Notice of Proposed Rulemaking simply stated that the audit should be performed in accordance with generally accepted auditing standards.

[9] The Revised Proposal differs from the Joint Stakeholders' Proposal by clarifying that the auditor would initially only be authorized to verify the Statement(s) of Account which were listed in the notice of intent to audit. As discussed in section VIII(B), if the auditor discovers an underpayment that meets or exceeds a certain threshold, the auditor would be permitted to expand the scope of the audit to include other Statements which were not mentioned in the initial notice.

[10] The licensing requirements for a CPA are set and enforced by the Board of Accountancy for the jurisdiction(s) where the CPA practices (rather than the AICPA). However, CPAs who join the AICPA agree to abide by the Code of Professional Conduct and Bylaws (the "Code") that have been adopted by the organization. "The bylaws provide a structure for enforcement of the Code by the Institute's Professional Ethics Division. When allegations come to the attention of the Ethics Division regarding a violation of the Code, the division investigates the matter, under due process procedures, and depending upon the facts found in the investigation, may take a confidential disciplinary action, settle the matter with suspension or revocation of membership rights, or refer the matter to a panel of the Trial Board Division for a hearing." *See* AICPA, FAQs—Become a CPA, *ovoilable ot http://www.oicpa.org/BecomeACPA/FAQs/Poges/FAQs.aspx.*

[11] According to the AICPA, 47 states and jurisdictions allow CPAs to accept contingency fees, except in situations where the CPA audits or reviews a financial statement or prepares an original tax return. *See* AICPA Code of Professional Conduct, Rule 302—Contingent Fees, available at *http://www.aicpo.org/reseorch/stondords/codeofconduct/poges/et_302.aspx; see olso* AICPA, Commissions and Contingent Fees, available at *http://www.oicpo.org/Advocacy/Stote/Poges/CommissionsandContingentFees.ospx*

[12] To be clear, an auditor who has been subject to a disciplinary inquiry or proceeding at some point in the past would not necessarily be disqualified from conducting an audit under this procedure.

See 77 FR 35647, June 14, 2012. Many of the parties criticized this approach.

In order to avoid "needless delay and added expense," the Copyright Owners contended that the statutory licensee should be given a 30 to 90 day deadline to provide the auditor with the information he or she needs to conduct the verification procedure. (Copyright Owners at 6.) DISH predicted that the statutory licensee would have to "devote certain resources to ensuring compliance with the auditor's needs," and that the "longer the auditing process is stretched out, the greater the resource strain." Therefore, DISH said that the auditor should be given a precise deadline for completing the verification process. (DISH at 6.)

DISH also contended that the auditor should not conduct a deep and burdensome "inquiry into the cable or satellite carrier's business operations or processes." Instead, he or she should simply confirm that the licensee correctly identified the network and non-network transmissions carried by that licensee during the relevant time period and confirm that the licensee correctly multiplied the number of subscribers who receive each transmission by the applicable royalty rate. (DISH at 5–6.) AT&T expressed a similar concern. Citing the Office's audit regulations for digital audio recording devices, it asserted that the auditor should review the information that the statutory licensee provides in its Statement of Account, but should not consider any discrepancies that appear on the face of each Statement or any aspect of the Statement that is reviewed by the Licensing Division, such as the classification of stations as distant, local, permitted, or non-permitted. AT&T also contended that statutory licensees should not be required to provide the auditor with information concerning individual subscribers. (AT&T at 3, 4; AT&T Reply at 4.)

Both AT&T and the NCTA stated that the audit should he conducted during normal business hours in order to expedite the audit process and to minimize the disruption to the statutory licensee's business. (AT&T at 9; NCTA at 8.) In addition, AT&T contended that the statutory licensee should be given 60 days to respond to the auditor's request for information, and that the licensee should not be required to respond to such requests within 75 days before the due date for a semiannual Statement of Account "when individuals with the most knowledge are fully occupied with meeting filing requirements." (AT&T at 9.)

B. Discussion

The Revised Proposal addresses the parties' concerns regarding the scope and duration of the audit. The statutory licensee would be given more than two months notice to identify and collect information that may be relevant to the audit. Specifically, the copyright owner would be required to serve a notice of intent to audit on the licensee that identifies the Statements of Account that will be reviewed by the auditor. At least 30 days would pass before other participating copyright owners would be required to notify the licensee of their intent to join the audit. The licensee would be given at least 5 business days to select the auditor who would conduct the verification procedure and another 30 days thereafter to provide the auditor with a list of the broadcast signals that the licensee retransmitted during the accounting period(s) at issue in the audit. So as a practical matter, the licensee would have at least 65 days to prepare before the audit gets underway.

After the auditor has been selected, the licensee would be required to provide the auditor and a representative of the participating copyright owners with a certified list of the broadcast signals retransmitted under each Statement of Account that is at issue in the audit, including the call sign for each broadcast signal and each multicast signal. In addition, cable systems and multiple system operators ("MSOs") would be required to identify the classification of each signal on a community by community basis pursuant to §§ 201.17(e)(9)(iv)–(v) and 201.17(h) of the regulations.

The Joint Stakeholders included similar language in their proposal,[13] and the Office assumes that this provision is intended to respond to the Copyright Owners' request that statutory licensees be given a precise deadline for providing information that the auditor needs to conduct the verification procedure. However, the Office notes that statutory licensees already provide this information in the Statements of Account that they file with the Licensing Division, and that the person signing the Statement must certify, under penalty of law pursuant to title 18 of the U.S. Code, that this information is true, correct, and complete. Although the Office included this requirement in the Revised Proposal, the Office seeks comment on whether there is any benefit in requiring licensees to provide information that should be apparent from the face of their Statements of Account.

The Revised Proposal would allow the statutory licensee to suspend an audit for up to 30 days before the due date for filing a semiannual Statement of Account,[14] although the licensee would not be allowed to exercise this option once the auditor has delivered the initial draft of his or her report to the licensee.[15] At the same time, the Revised Proposal protects the interests of the copyright owners by requiring the licensee to execute an agreement tolling the statute of limitations for no more than 30 days if the copyright owners believe in good faith that the suspension could prevent the auditor from delivering his or her final report before the statute of limitations expires.

The Revised Proposal differs from the Joint Stakeholders' proposal insofar as the Joint Stakeholders would have allowed the statutory licensee to suspend the audit for up to 60 days before the deadline for filing a semiannual Statement of Account. Given that the copyright owners may conduct only one audit per year, the Office believes that it would be unduly restrictive to impose a "blackout period" on the auditor for up to four months of the year.

DISH contended that the auditor should be given a precise deadline for completing the audit, but this does not appear to be necessary. As discussed in section VIII(B), a statutory licensee would be subject to no more than one audit per calendar year. In other words, if the copyright owners launched an audit on January 1, 2014 and if that audit was still ongoing as of January 1, 2015, the copyright owners would not be allowed to conduct another audit of that licensee until January 1, 2016. As a result, the copyright owners would have a strong incentive to complete each audit before the end of the calendar year.

The Revised Proposal specifically states that the statutory licensee must provide the auditor with reasonable access to the licensee's books, records, or other information that the auditor needs in order to conduct the audit. The Revised Proposal protects the licensees' interests by providing that the audit must be conducted during normal

[13] The primary difference is that the Revised Proposal would impose this requirement on satellite carriers, cable systems, and MSOs alike, while the provision in the Joint Stakeholders' Proposal only applied to cable operators and MSOs.

[14] In other words, satellite carriers could suspend an audit from January 1st through January 30th and from July 1st through July 30th, while cable operators could suspend an audit from January 28th through February 28th (in a non-leap year) and from July 31st through August 29th.

[15] This limitation is discussed in more detail in section IX(B).

business hours at a location designated by the licensee, that consideration must be "given to minimizing the costs and burdens associated with the audit," and that the licensee is only required to provide the auditor with information that he or she "*reasonably* requests" (emphasis added). This should address DISH's concern that the verification procedure might lead to a "deep and burdensome inquiry" into a licensee's business operations or processes. (DISH at 5–6.) The Revised Proposal also requires the auditor to safeguard any confidential information that he or she may receive from the licensee. This should address AT&T's concern that cable operators might be asked to provide the auditor with information concerning individual subscribers.

Finally, AT&T contended that the auditor should review the information that the licensee provided in its Statement of Account, but should not consider any discrepancies that appear on the face of the Statement or any aspect of the Statement that is reviewed by the Licensing Division, such as the classification of stations as distant, local, permitted, or non-permitted, or other discrepancies. The Revised Proposal addresses this concern by requiring that the auditor verify "all information reported on the Statements of Account subject to the audit in order to confirm the correctness of calculations and royalty payments reported therein." However, the auditor shall not determine whether a cable system properly classified any broadcast signal under §§ 201.17(e)(9)(iv)–(v) and 201.17(h) of the regulations or whether a satellite carrier properly determined that any subscriber or group of subscribers is eligible to receive broadcast signals under section 119(a) of the Act.

VII. Retention of Records

A. Comments

The Notice of Proposed Rulemaking explained that a statutory licensee would be required to retain any records needed to confirm the correctness of the calculations and royalty payments reported in its Statements of Account for at least three and a half years after the last day of the year in which the Statement was filed with the Office. The Office also explained that a licensee who has been subject to an audit would be required to retain those records for at least three years after the date that the auditor delivers his or her final report to the copyright owners who decided to participate in the audit.

Generally speaking, the parties did not object to this proposal. The Copyright Owners opined that when a statutory licensee files an amended Statement of Account, the deadline for maintaining records should be calculated from the date that the amendment is filed rather than the date of the initial Statement. (Copyright Owners at 6.) DISH stated that if the auditor determines that the statutory licensee correctly reported the royalties due on a particular Statement of Account the licensee should not be required to retain its records concerning that Statement once the auditor has delivered his or her final report to the copyright owners. (DISH at 7–8.)

B. Discussion

In response to the Copyright Owners' concerns, the Revised Proposal specifies that the deadline for maintaining records for an amended Statement of Account should be calculated from the date that the amendment was filed rather than the filing date for the initial Statement.

The Office is concerned that the one-year retention period proposed by the Joint Stakeholders would deprive copyright owners of the benefits of the three-year statute of limitations and it would create confusion for statutory licensees (with a one year retention period for Statements of Account that have been audited, and a three year retention period for Statements that could potentially be subject to an audit). Therefore, the proposed regulation states that a licensee who has been subject to an audit would be required to retain any records needed to confirm the correctness of the calculations and royalty payments reported in a Statement of Account for at least three years after the date that the auditor delivers his or her final report to the copyright owners. The Office weighed DISH's concerns, but concluded that a licensee should be required to retain its records even if the auditor finds no discrepancies in the Statements of Account, to ensure that the licensee does not discard its records before the copyright owners have had an opportunity to review the auditor's report.

VIII. Frequency of the Audit Procedure

A. Comments

In its Notice of Proposed Rulemaking, the Office suggested that a satellite carrier or a cable operator that owns one cable system should be subject to no more than one audit per year. By contrast, an operator that owns more than one system would be subject to no more than three audits per year. In order to protect the interests of multiple system operators, the Office explained that the auditor would review a sampling of the systems owned by each MSO. To protect the interests of copyright owners, the Office explained that if the auditor discovers an underpayment of 5 percent or more in a Statement of Account filed by an MSO, the size of the sample could be expanded to include any and all of the systems owned by that operator.

The Office explained that the Notice of Proposed Rulemaking was merely a starting point for further discussion on these issues, and invited comment from interested parties concerning the limit on the total number of audits that an MSO should be required to undergo in a single year. *See* 77 FR 35647, June 14, 2012. The Office invited comments on whether an audit involving 50 percent of the systems owned by a particular operator would be likely to produce a statistically significant result. It also invited comments on whether a 50 percent threshold would be unduly burdensome for MSOs and, if so, what percentage would be appropriate. *See id* at 35648.

The Copyright Owners did not object to the proposed limit on the number of audits that an MSO would be required to undergo, but recommended that the Office define the term "multiple system operator" to avoid any confusion about which systems would be covered by this aspect of the regulation. (Copyright Owners at 7.) AT&T stated that an MSO should be subject to no more than one audit per year and that each audit should be limited to no more than two Statements of Account, noting that this would be consistent with verification procedures that the Office has adopted in the past. (AT&T at 2.) The NCTA expressed the same view, but stated that each audit should be limited to no more than one Statement of Account. (NCTA at 6, 7.)

The NCTA and AT&T agreed that an audit involving an MSO should be based on a reasonable sampling of the systems owned by that entity. (AT&T at 3; NCTA at 6.) AT&T explained that an audit involving 50 percent of its systems "would cause substantial burden and disruption" and stated that the accuracy of its Statements of Account could be determined based on a "substantially smaller sample." (AT&T at 3.) While AT&T did not propose a specific number or percentage of systems that should be included in each audit, the NCTA stated that a representative sample of 10 percent or less would be consistent with audit practices and "should be more than sufficient to determine whether an MSO's SOAs

suffer from any systemic problems." (NCTA at 6.)

The Copyright Owners agreed that if the auditor discovers an underpayment of 5 percent or more in an audit of an MSO, the auditor should be allowed to expand the scope of the audit to include all of the systems owned by that operator. (Copyright Owners at 7.) AT&T did not object to the idea of expanding the number of systems subject to the audit, but stated that an expanded audit should require a showing of good cause. Specifically, AT&T stated that the amount of the underpayment should exceed a minimum threshold and a minimum percentage in order to trigger an expanded audit, and that discrepancies that appear on the face of a Statement of Account or discrepancies based on "reasonable disagreements about issues of law, construction of regulations, or accounting procedures" should not be included in this calculation. In addition, AT&T stated that the Office should create a separate procedure for resolving good faith disputes over legal, regulatory, and accounting issues before the copyright owners are allowed to expand the scope of an audit. (AT&T at 8, 9.)

The NCTA categorically opposed the idea of expanding the scope of an audit involving an MSO. It asserted that there is no need to audit more than 10 percent of the systems owned by an MSO, because a sample of 10 percent of those systems should disclose any systemic problems in the operator's royalty calculations. The NCTA also asserted that it would be unreasonable to allow an "isolated underpayment" in a single Statement of Account to trigger an audit of all of the systems owned by that operator. (NCTA at 6–7.)

B. Discussion

The Revised Proposal states that statutory licensees would be subject to no more than one audit per calendar year (regardless of the number of cable systems that they own) and the audit of a particular satellite carrier or cable system would be limited to no more than two of the Statements of Account submitted by that licensee.

In response to the concerns expressed by AT&T and the NCTA, the Revised Proposal explains that an audit involving an MSO would be limited to a sampling of the systems owned by that entity. Specifically, the auditor would be permitted to verify the Statements of Account filed by no more than 10 percent of the Form 2 and 10 percent of the Form 3 systems owned by an MSO. In order to avoid any confusion about which systems would be subject to this procedure, the Revised Proposal explains that the term MSO means "an entity that owns, controls, or operates more than one cable system."

If the Office has published a notice of intent to audit a particular Statement of Account in the **Federal Register,** the Office would not accept another notice of intent to audit that Statement. Once the auditor has begun to audit a particular satellite carrier, a particular cable system, or a particular MSO, copyright owners would not be permitted to conduct another audit of that licensee until the following calendar year.

For example, if the auditor started to review a licensee's Statement of Account for the 2010/1 accounting period on August 1, 2013 and if the auditor delivered his or her final report the copyright owners by December 31, 2013, the copyright owners would be allowed to audit other Statements filed by that licensee beginning on January 1, 2014. However, if the auditor delivered his or her final report on March 1, 2014, the licensee would not be subject to any other audits in calendar year 2013 or 2014.

The copyright owners could lay the initial groundwork for other audits involving this licensee at any time. For example, the copyright owners could file a notice of intent to audit the licensee's Statement of Account for the 2011/2 accounting period on October 1, 2013, even if the auditor was still reviewing the licensee's Statement for the 2010/1 accounting period as of that date. Other participating copyright owners would then be required to notify the copyright owner and the licensee of their intent to audit the 2011/2 Statement within 30 days thereafter.[16] However, the participating copyright owners could not propose a list of qualified and independent auditors to review the 2011/2 Statement until 30 days after the final report concerning the 2010/1 Statement has been delivered to the participating copyright owners and the licensee.

In order to protect the interests of copyright owners, the Revised Proposal provides an exception to these rules. In the event that the auditor discovers an underpayment in his or her review of a satellite carrier or a particular cable system, the copyright owners would be permitted to audit all of the Statements of Account filed by that particular cable system or satellite carrier during the previous six accounting periods (including a cable system that is owned by an MSO). Consistent with the Federal Rule of Civil Procedure, the copyright owners should exclude the Statements of Account listed in the notice of intent to audit when identifying the "previous six" accounting periods that will be included in the expanded audit.[17] *See* Fed. R. Civ. P. 6(a)(1)(A). In addition, if the auditor discovers an underpayment in his or her review of an MSO, the copyright owners would be permitted to audit a larger sample of the cable systems owned by that operator. Specifically, the copyright owners would be permitted to audit 30 percent of the Form 2 and 30 percent of the Form 3 systems owned by that operator.

Generally speaking, the expanded audit would be considered an extension of the initial audit. However, the copyright owners would be required to file another notice of intent to audit with the Copyright Office, given that the expanded audit would include Statements of Account and/or cable systems not listed in the initial notice. Doing so would give other copyright owners an opportunity to join in the expanded audit and it would put them on notice that a subsequent audit of the Statements identified in the notice will not be permitted. In addition, it would provide the statutory licensee with advance notice of the Statements of Account and/or cable systems that would be included within the expanded audit.[18]

The Revised Proposal explains that the expanded audit may be conducted by the same auditor who conducted the initial audit, provided that the copyright owners supply the licensee with information sufficient to show that there has been no material change in the auditor's independence and qualifications.[19] If the copyright owners

[16] As the Office explained in its Notice of Proposed Rulemaking, "if a copyright owner filed a notice of intent to audit a particular Statement of Account or a particular statutory licensee in calendar year 2013 and if that audit was still ongoing as of January 1, 2014, the Office would accept a notice of intent to audit filed in calendar year [2013 or] 2014 concerning other Statements filed by that same licensee." *See* 77 FR 35645 n.3, June 14, 2012,.

[17] Copyright owners may have an incentive to audit the licensee's two most recent Statements of Account before auditing the licensee's earlier Statements, given that an underpayment in the most recent Statements would give the copyright owners an opportunity to audit all of the Statements that the licensee submitted for the previous six accounting periods.

[18] The Office did not adopt the Joint Stakeholders' Proposal, which stated that the expanded audit could be conducted "immediately" without specifying a precise procedure for when and how the expanded audit would begin.

[19] Under the Joint Stakeholders' Proposal, the copyright owners would be allowed to use the same auditor in another audit involving an MSO, but they would not be allowed to use the same auditor two years in a row. The Office fails to see the justification for this limitation.

prefer to use a different auditor or if the previous auditor is no longer qualified or independent within the meaning of the regulation, a new auditor may be selected using the procedure discussed in section V(B) above.

Because an expanded audit would be an extension of the initial audit, the copyright owners could proceed with an audit of a satellite carrier or a particular cable system at any time (including a cable operator that is owned by an MSO). For example, if the copyright owners audited a cable operator's Statement for the 2013/1 accounting period in June 2014 and if the auditor discovered an underpayment on that Statement, the copyright owners would be permitted to audit any or all of the operator's Statements for the 2010/1 through 2012/2 accounting periods in calendar year 2014.[20] If the auditor delivered his or her final report to the copyright owners by December 31, 2014, the copyright owners would be allowed to audit other Statements filed by that operator beginning on January 1, 2015. However, if the auditor delivered his or her report on the 2013/1 Statement on or after January 1, 2015, then the operator would not be subject to any other audits in calendar year 2015.

In order to protect the interests of MSOs, the Revised Proposal provides a limited exception to this rule. As discussed above, the copyright owners would be allowed to audit a larger sample of the cable systems owned by an MSO if the auditor discovered an underpayment during the initial audit. However, the expanded audit could not be conducted until the following calendar year. For example, if the auditor discovered an underpayment in the 2013/1 and 2013/2 Statements of Account for one of the Form 2 and four of the Form 3 systems owned by an MSO, the copyright owners would be permitted to audit any or all of the Statements filed by those systems for the 2010/1 through 2012/2 accounting periods. If the auditor delivered his or her report to the copyright owners on July 1, 2014, the copyright owners could proceed with this expanded audit in calendar year 2014. In addition, the copyright owners would be allowed to audit the Statements filed by 30 percent of the Form 2 and 30 percent of the Form 3 systems owned by that operator. However, those systems could not be audited until January 1, 2015, and the copyright owners would not be allowed to audit any other cable systems owned by that MSO in calendar year 2015.

In all cases, the copyright owners would only be allowed to conduct an expanded audit if the auditor discovers a "net aggregate underpayment" of 5 percent or more on all of the Statements listed in the notice of intent to audit.[21] This addresses AT&T's concern that the underpayment should exceed a minimum percentage in order to trigger an expanded audit, and the NCTA's concern that an isolated underpayment in a single Statement of Account should not trigger an audit of all of the systems owned by an MSO.

The Office assumes that the amount of underpayments and overpayments that may be discovered in an audit may vary depending on the size of the statutory licensee and the amount of its royalty obligations. Therefore, the Office is not inclined to set a minimum monetary threshold needed to trigger an expanded audit (as AT&T recommended). Nor is the Office inclined to create a separate procedure for resolving disagreements over legal, regulatory, or accounting issues before an audit is expanded (as AT&T suggested). The Office believes that the consultation between the auditor and the statutory licensee, and the opportunity to prepare a written response to the auditor's conclusions should provide the parties with an adequate opportunity to air their differences concerning the auditor's conclusions.

IX. Disputing the Facts and Conclusions Set Forth in the Auditor's Report

A. Comments

The Notice of Proposed Rulemaking proposed that the auditor prepare a written report setting forth his or her conclusions and deliver a copy of that report to the statutory licensee before it is delivered to any of the copyright owner(s) that elected to participate in the audit. If the statutory licensee disagrees with any of the facts or conclusions set forth in the auditor's report, the licensee's designee should raise those issues during the initial consultation with the auditor. If the auditor agrees that a mistake has been made, the auditor should correct those errors before the final report is delivered to the copyright owners. If the facts or conclusions set forth in the auditor's report remain in dispute after the consultation period has ended, the licensee would have the opportunity to provide the auditor with a written response setting forth its views within two weeks (*e.g.*, 14 calendar days) after the date of the initial consultation between the auditor and the licensee's representative. The auditor would be required to include that response as an attachment to his or her final report, which would have to be delivered to the copyright owners and the statutory licensee within 60 days after the date that the auditor delivered the initial draft of his or her report to the licensee.[22]

The Office invited comment on whether the regulation should provide a precise amount of time for the auditor to discuss his or her report with the statutory licensee's designee, and if so, whether 30 days would be a sufficient amount of time. AT&T stated that the licensee should be given 45 days to review the initial report before the consultation period begins; none of the other parties commented on this aspect of the proposal.

The Office also invited comment on whether 14 days would be a sufficient amount of time for the statutory licensee to prepare a written response to the auditor's report, and whether 60 days would be a sufficient amount of time for the auditor to prepare his or her final report for the copyright owners. ACA stated that a 14 day deadline would "increase administrative burdens" for smaller cable operators, and that they should be given "flexibility to respond within a reasonable amount of time." (ACA at 8.) AT&T agreed that 14 days would be "wholly inadequate" and that a statutory licensee should be given 60 days to prepare a written response to the auditor's report. AT&T also contended that a licensee should be allowed to extend the response period for another 30 days if the 60-day period falls within 75 days before the due date for submitting a semiannual Statement of Account. (AT&T at 9–10.) The NCTA expressed the same view, stating that the 14 day deadline for preparing a written response to the auditor and the 60 day deadline for completing the final

[20] As discussed in section VII(B), the licensee would be required to retain any records needed to confirm the correctness of the calculations and royalty payments reported in these Statements for at least three years after the last day of the year in which the Statement were filed with the Office. Once the licensee has received a notice of intent to audit those Statements, the licensee would be required to retain its records for three years after the auditor delivers his or her final report.

[21] The Revised Proposal differs from the Joint Stakeholders' Proposal by clarifying that the copyright owners would be allowed to conduct an expanded audit if the auditor discovers an underpayment that is 5 percent or more of the amount reported on the Statements of Account at issue in the audit, as opposed to requiring a net aggregate underpayment of exactly 5 percent. In making this calculation the auditor would be required to subtract the total amount of any overpayments reflected on the Statements at issue in the audit from any underpayments reflected on those Statements.

[22] The Copyright Owners said that the Office should provide "a hard deadline for issuing the final report" (Copyright Owners at 9), but in fact, the deadline that they recommended in their comments is precisely the same as the deadline specified in the Notice of Proposed Rulemaking.

report would be "unreasonably short." (NCTA at 9.)

B. Discussion

The Notice of Proposed Rulemaking and the Revised Proposal follow the same approach for disputing the facts and conclusions set forth in the auditor's report. The only difference is that the Revised Proposal would require the auditor to deliver his or her final report to the copyright owners within 5 business days after the statutory licensee's deadline for delivering its written response to that report.

AT&T stated that the statutory licensee should be given 45 days to review the initial draft of the auditor's report before the consultation period begins, and AT&T, the ACA, and the NCTA predicted that cable operators would need more than 14 days to prepare a written response to that report. However, none of the parties offered any evidence to support these claims, and the Office continues to believe that 44 days (*i.e.*, 30 days for the consultation period plus another 14 days to prepare a written response) is a reasonable amount of time for the licensee to review and respond to the auditor's report.

Under the Joint Stakeholders' proposal, the auditor would be required to send his or her report to both the participating copyright owners and the licensee even if the auditor has reason to suspect that the licensee has committed fraud and that disclosing his or her conclusions to the licensee would prejudice further investigation of that fraud. The Office is concerned that sending the report to both parties may defeat the purpose of withholding the auditor's suspicions from the licensee. Therefore, the Revised Proposal states that the auditor may send a copy of his or her report to the copyright owners in this situation without providing a complete copy to the licensee. However, the Office is also concerned that the licensee would be denied the opportunity to consult with the auditor and to remedy any errors or disputed facts or conclusions set forth in the auditor's report, as required by section 111(6)(C) of the Act. Therefore, the Revised Proposal would allow the auditor to deliver an abridged version of the report to the licensee that contains all of the facts and conclusions set forth in his or her report to the copyright owners except for the auditor's ultimate conclusion that the licensee has committed fraud.

The Revised Proposal also differs from the Joint Stakeholder' proposal for suspending the audit in the period prior to the deadline for filing semiannual Statements of Account. As discussed above, the Revised Proposal would allow the licensee to suspend the audit for up to 30 days before the deadline for filing its semiannual Statement of Account, but the licensee would not be allowed to exercise this option once the auditor has delivered the initial draft of his or her report to the licensee. DISH predicted that a licensee may need to devote "certain resources" in order to respond to the auditor's "inquiries" (DISH at 6), but neither DISH nor any other party offered any evidence to suggest that the time needed to consult with the auditor or to prepare a written response to the auditor's report would prevent a licensee from filing its semiannual Statement of Account in a timely manner. Nor is the Office aware of such problems in the audit procedures for statements of account filed under the section 112 and 114 licenses or under chapter 10.

X. Correcting Errors and Curing Underpayments Identified in the Auditor's Report

A. Comments

The Notice of Proposed Rulemaking explained that if the auditor concludes that the information in a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee was incorrect, or that the statutory licensee failed to deposit the royalties owed with the Office, the licensee may correct those errors by filing an amended Statement of Account and/or by submitting supplemental royalty payments to the Office. To do so, the licensee should follow the procedures set forth in 37 CFR 201.11(h)(1) and 201.17(m)(3), including the obligation to pay interest on any underpayment that may be due and the requisite amendment fee. The Office invited comment on whether statutory licensees should be given a deadline for correcting errors in their Statements of Account and for making supplemental royalty payments, and if so, whether 30 days would be a sufficient amount of time.

The Copyright Owners contended that if an independent auditor determines that a statutory licensee failed to pay the correct amount of royalties, the licensee should be required to file an amended Statement of Account and to correct the underpayment within 30 days after the auditor delivers his or her final report. Otherwise, the licensee would have a "perverse incentive" to ignore the auditor's conclusions "until either the statute of limitation runs or a copyright owner drafts an infringement complaint." (Copyright Owners at 8–9.) In the NCTA's view, the statutory license should be allowed to amend its Statement of Account and to make any supplemental royalty payments after the consultation period has ended but before the auditor has delivered his or her final report to the copyright owners. (NCTA at 10.) AT&T contended that the licensee should be given an opportunity to cure any alleged underpayments within 60 days after the consultation period has ended. In addition, AT&T said that "[t]he regulation should make clear that such remediation and cure does not constitute [the] licensee's admission that the prior reports and payments were wrong." (AT&T at 9–10.)

While the Notice of Proposed Rulemaking gave statutory licensees an opportunity to correct any underpayments in their Statements of Account at any time, it did not allow licensees to request a refund from the Office in the event that the auditor discovered an overpayment. In DTV's view, a licensee should be allowed to request a refund in this situation, or in the alternative, to deduct the overpayment from a future Statement of Account. (DTV at 2–3.) The NCTA agreed that cable operators should be allowed to request refunds for any overpayments discovered during the course of an audit. (NCTA at 14–15.)

B. Discussion

Generally speaking, the Notice of Proposed Rulemaking and the Revised Proposal give the statutory licensee the opportunity to correct any errors or underpayments reported in a Statement of Account. The primary difference is that the Revised Proposal would give the licensee a precise deadline for exercising this option. It states that the licensee may file an amended Statement of Account and may submit supplemental royalty fees within 60 days after the auditor delivers his or her final report to the copyright owners and the statutory licensee or within 90 days after that date in the case of an audit involving an MSO. In addition, the Revised Proposal would allow the licensee to request a refund from the Office if the auditor discovered an overpayment on any of the Statements of Account at issue in the audit.

The Office will issue a refund under its current regulations if a request to amend a Statement of Account is received within 30 to 60 days after the last day of the accounting period for that Statement or within 30 to 60 days after the overpayment was received in the

Office,[23] whichever is longer, or if the Office discovers a legitimate overpayment in its examination of an initial Statement or amended Statement. *See* 37 CFR 201.11(h)(1); 201.11(h)(3)(i)–(vi); 201.17(m)(3)(i)–(vi). STELA directed the Office to establish a mechanism for correcting "any underpayment identified" in the auditor's report, but it did not mention overpayments or refunds. *See* section 111(d)(6)(C)(ii). Nevertheless, the Office does have the authority to prescribe regulations concerning the Statements of Account that cable operators and satellite carriers file with the Office, 17 U.S.C. 111(d)(1); 119(b)(1), and the Office agrees that a regulation authorizing refunds for overpayments discovered in the course of a verification procedure would be consistent with "the administration of the functions and duties made the responsibility of the Register" under title 17 of the U.S. Code. 17 U.S.C. 702.

Under the Revised Proposal the statutory licensee may request a refund for an overpayment that is discovered during an audit by following the procedures set forth in §§ 201.17(m)(3) or 201.11(h)(3) of the regulations. The refund request must be received in the Office within 30 days after the auditor has delivered his or her final report to the licensee. The Joint Stakeholders' proposal would have given the licensee 60 days to request a refund, but the Office concluded that 30 days would be more appropriate, given that the amount of the overpayment and the basis for the refund request would be apparent from the auditor's report.

When the Office receives a notice of intent to audit a particular Statement of Account and until the conclusion of that audit, the Office will retain sufficient royalties to ensure that funds are available in the event that the licensee subsequently requests a refund. The Office does not need a copy of the auditor's final report, but it would be helpful to know when the audit has been completed. Therefore, the Revised Proposal directs a representative of the participating copyright owners to notify the Office when the auditor has delivered his or her final report and to state whether the auditor discovered an overpayment on any of the Statements at issue in the audit. If the auditor did not discover any overpayments, the royalties will be made available for distribution to the copyright owners at the appropriate time.

[23] The deadline for satellite carriers is 30 days, while the deadline for cable operators is 60 days.

XI. Cost of the Audit Procedure

A. Comments

The Notice of Proposed Rulemaking explained that the copyright owner(s) who selected the auditor would be expected to pay the auditor for his or her work in connection with the audit, unless the auditor were to determine that there was an underpayment of 5 percent or more reported in any Statement of Account that is subject to the audit. If so, the statutory licensee would be expected to pay the auditor's fee. If the auditor's determination is subsequently rejected by a court, then the copyright owners would have to reimburse the statutory licensee for the cost of the auditor's services. The Office invited comment on whether the regulation should include a cost-shifting provision, and if so, whether the percentage of underpayment needed to trigger this provision should be more or less than 5 percent. *See* 77 FR 35649, June 14, 2012.

This proved to be the most controversial aspect of the proposed regulation. The Copyright Owners supported the proposal, noting that it would be consistent with the verification procedures that the Office has issued for other statutory licensees. (Copyright Owners at 9–10.) AT&T, DISH, ACA, and the NCTA strongly opposed the idea.[24]

AT&T contended that the Office does not have the legal authority to shift the costs of the audit from the copyright owners to the statutory licensee. AT&T stated that "the absence of any provision relating to cost-shifting . . . confirms that Congress did not intend for the Register to authorize cost-shifting," and the fact that the statute indicates "that the auditor is working on behalf of copyright owners" suggests that the cost of the audit should be paid by the copyright owners. (AT&T at 5–6.) AT&T also suggested that the cost-shifting provision "would implicate due process and delegation concerns," because it "effectively grants an interested private party the authority to regulate 'private persons whose interests may be and often are adverse.'" AT&T contended that this represents "'an intolerable and unconstitutional interference with personal liberty and private property,'" that it is "'clearly arbitrary,'" and that it constitutes "'a denial of rights safeguarded by the due process clause of the Fifth Amendment.'" (AT&T at 7, quoting *Carter* v. *Coal Co.*, 298 U.S. 238 (1936)).

AT&T, the ACA, the NCTA, and DISH contended that cost-shifting would be unfair to the statutory licensee. They predicted that statutory licensees would expend substantial resources in responding to the audit, they noted that licensees would not be able to recover any of their costs from the copyright owners, nor would licensees receive any financial benefit from the verification procedure that might offset these costs. By contrast, the copyright owners could decline to participate in the audit if they do not wish to pay for the auditor's services, and if they decide to join the audit they could split the cost of the audit amongst themselves. (ACA at 3; DISH at 9; NCTA at 13.)

ACA worried that a 5 percent underpayment threshold could result in a relatively small underpayment giving rise "to an audit bill several orders of magnitude larger." (ACA at 1, 3.) AT&T and DISH predicted that this would encourage the auditor to look for "discrepancies even where they do not exist" and "to raise as many issues as possible, whatever their merit." (AT&T at 6; DISH at 9.) AT&T also predicted that a cost-shifting provision would discourage licensees from correcting the underpayments reported on their Statements of Account, because a supplementary payment could be viewed as an admission that the auditor's calculations are correct. (AT&T at 6.) In order to avoid this result, AT&T urged the Office to create a separate "process for resolving disputes or for determining how much a system operator has underpaid." (AT&T at 7.)

Although they strongly opposed the Office's cost-shifting proposal, the ACA, the NCTA, and AT&T offered several suggestions for improving the cost-shifting provision. ACA stated that the underpayment threshold should be set significantly higher than 5 percent, that the underpayment should surpass a minimum dollar amount in order to trigger a cost-shifting, and that the Office should provide additional relief for small cable operators. (ACA at 1, 3, 4.) AT&T and the NCTA expressed a similar view. AT&T stated that the cost of the audit should only be shifted if the auditor discovers an underpayment of $10,000 or more. (AT&T at 7–8.) In addition, AT&T and the NCTA agreed that the cost of the audit should only be shifted if the auditor finds an underpayment of 10 percent or more, noting that a 10 percent threshold would be consistent with the trigger that the Office has adopted in its other audit regulations. (AT&T at 7–8; AT&T Reply at 3; NCTA at 13.)

In determining whether the minimum threshold has been met, both AT&T and the NCTA said that the auditor should consider the total amount of royalties

[24] DTV took no position on this issue.

reported by all of the cable systems and reflected on all of the Statements of Account that are at issue in the audit. The NCTA stated that the auditor should consider both overpayments and underpayments in making this calculation. However, AT&T stated that the auditor should not consider "underpayments attributable to reasonable disagreements on issues of law, constructions of regulations, or accounting procedures" or other issues "about which reasonable minds may differ." (AT&T at 7–8; NCTA at 13.)

Both AT&T and the NCTA stated that the costs of the audit must be reasonable, and that in no event, should the licensee be required to pay for costs that exceed the amount of the underpayment. (AT&T Reply at 3; NCTA at 13, 14.) They stated that the statutory licensee should not be required to pay for an audit unless a court determines that the licensee failed to report the correct amount of royalties, noting that requiring a final judicial determination would be consistent with the cost-shifting procedures set forth in the Office's other audit regulations. (AT&T at 7–8; AT&T Reply at 3; NCTA at 14.) In addition, AT&T stated that if the auditor discovers an overpayment of 10 percent or more, the copyright owners should be required to reimburse the licensee for the costs that it incurred in responding to the audit. AT&T contended that this would discourage copyright owners from abusing the verification procedure. (AT&T at 7–8.)

As discussed above, the Notice of Proposed Rulemaking would allow copyright owners to expand the scope of the audit to include other systems owned by an MSO if the auditor discovers an underpayment in an audit of its systems. (AT&T at 7.) AT&T stated that the statutory licensee should not be required to pay for the cost of an expanded audit based solely on the fact that the auditor discovered an underpayment in the initial audit. (AT&T at 8.)

B. Discussion

1. The Office Has the Authority To Include a Cost-Shifting Provision in Its Audit Regulations

Section 702 of the Act states that "The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." 17 U.S.C. 702. This includes the authority to prescribe regulations concerning the Statements of Account that cable operators and satellite carriers file with the Office, and the authority to prescribe regulations concerning the verification of those Statements. *See* 17 U.S.C. 111(d)(1); 111(d)(6); 119(b)(1), 119(b)(2). The Office has concluded that a regulation authorizing cost-shifting for underpayments discovered in the course of a verification procedure would be consistent with "the administration of the functions and duties made the responsibility of the Register" under title 17 of the U.S. Code. 17 U.S.C. 702. Moreover, the Office is not aware of any provision in sections 111(d)(6), 119(b)(2), or elsewhere in the Act that precludes the Office from adopting regulations that allocate the cost of a verification procedure among the participants.

While there is no legislative history for STELA, the legislative history for a prior iteration of the legislation lends some additional support for the Office's conclusion.[25] Sections 102(f)(4) and 104(c)(6) of the earlier bill directed the Register to issue regulations to allow copyright owners to verify the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Office. Like sections 111(d)(6) and 119(b)(2) of the current statute, the earlier bill did not indicate whether the regulations should include a cost-shifting provision or whether those costs should be paid by the copyright owners or by the statutory licensee, or both. *See* Satellite Home Viewer Reauthorization Act of 2009, H.R. 3570, 111th Cong. §§ 102(f)(4), 104(c)(6) (2009).[26] However, the House Report for the earlier bill stated that "[t]he rules adopted by the Office shall include procedures allocating responsibility for the cost of audits consistent with such procedures in other audit provisions in its rules." *See* H.R. Rep. No. 111–319, at 10 (2009).

The House was aware that the Office has established verification procedures in the past and that the Office has included a cost-shifting provision in those regulations.[27] The fact that the House directed the Office to "include procedures allocating responsibility for the costs of audits"—despite the fact that the earlier bill did not explicitly mention this issue—indicates that the House expected the Office to include a cost-shifting provision in this regulation consistent with its long-standing practice of allocating costs among stakeholders on a reasonable basis. While the House Report tends to support the conclusion that the Office has the authority to create a cost-shifting procedure, the Office recognizes that the value of the House Committee's remarks is limited, given that Congress made significant changes to the provision concerning the verification procedure for cable operators before it was enacted in STELA (although the provision concerning the verification procedure for satellite carriers remained unchanged).[28]

AT&T contended that the cost-shifting provision would be unconstitutional, because it would impose "costs on the system operator based on the judgment of a private party" and it would allow the auditor to be "prosecutor, judge, and jury" if there is a dispute concerning the auditor's calculations.[29] (AT&T at 7.) AT&T did not contend that it would be a violation of due process or the delegation doctrine to allow an auditor to verify the information provided in a Statement of Account or to use the auditor's determination as the appropriate baseline for curing underpayments, requesting refunds, or expanding the scope of the audit to include other Statements filed by the statutory licensee. Nor does AT&T explain why the cost-shifting provision

[25] *See Defense Logistics Agency* v. *Federal Labor Relations Authority*, 754 F.2d 1003, 1008 (DC Cir. 1985) (noting that a House Committee report on an earlier version of a statutory provision provided "some support" for the agency's interpretation of the provision which was subsequently enacted by Congress); *Crooker* v. *Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1074 n.59 (DC Cir. 1981) (noting that "[t]o the extent that the legislative history of earlier bills is useful," it tended to support the court's interpretation of the legislation that Congress subsequently enacted).

[26] The bill was passed by the House on December 3, 2009. The bill was read twice in the Senate and referred to the Committee on the Judiciary.

[27] As the Office stated in the Notice of Proposed Rulemaking, the Office included a cost-shifting provision in its regulations concerning the audit of Statements of Account and royalty payments made under section 112, section 114, and chapter 10. *See* 77 FR 35649, June 14, 2012.

[28] *See Defense Logistics Agency*, 754 F.2d at 1008 (explaining that it would be "unwise to place great weight" on the legislative history for a prior version of a bill where the legislation "was altered significantly before adoption")

[29] In support of this argument AT&T cited two cases from the Great Depression, which are clearly distinguishable. In *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935) the Supreme Court held the National Industrial Recovery Act of 1933 to be unconstitutional, because it allowed poultry producers—rather than the government—to establish "codes of fair competition" for the poultry industry. Likewise, in *Carter* v. *Coal Co.*, 298 U.S. 238 (1936), the Court held the Bituminous Coal Conservation Act of 1935 to be unconstitutional, because it stated that if the companies that produce more than two-thirds of the nation's annual production of coal negotiated a labor agreement with more than half of their workers, then the minimum wages and maximum work hours specified in those contracts would be binding upon other coal mining companies. Unlike the laws at issue in these cases, STELA authorizes an auditor to confirm the correctness of the calculations and royalty payments reported on a particular Statement of Account, but the auditor's determination would not be binding upon any other statutory licensee or any other Statements that are not included within that audit.

would be unconstitutional, while these other aspects of the regulation would not.

In any event, the cost-shifting provision is not a violation of due process, because *inter alia*, the statutory licensee would be given an opportunity to meet and confer with the auditor report, to identify errors or mistakes in the initial draft of the auditor's report, and to prepare a written response to the auditor's conclusions before he or she delivers the final report to the copyright owners. If the licensee disagrees with the auditor's conclusion, the licensee could ask a court of competent jurisdiction to review that decision, and if the court agrees that the underpayment did not meet the threshold set forth in the proposed regulation, the copyright owners would be required to reimburse the licensee for the amount that it contributed to the cost of the audit. Likewise, the proposed regulation is not a violation of the delegation doctrine, because STELA expressly directs the Office—not the private industry—to develop a procedure for the verification of Statements of Account and royalty payments (although the Office has received valuable input on the proposed regulation from the Joint Stakeholders and other interested parties). *See Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, 398 (1940) ("Since law-making is not entrusted to the industry, this statutory scheme is unquestionably valid.").

AT&T, the ACA, and DISH predicted that the proposed regulation would be unduly burdensome for the statutory licensee. The Office weighed these concerns, but believes that they have been adequately addressed in the Revised Proposal. The Office also notes that cost-shifting provisions are commonly used in private agreements that provide a contractual right to audit another party's books or records, and the Office assumes that agreements negotiated by members of the copyright, cable, and satellite industries are no exception.

AT&T, the ACA, and DISH contended that statutory licensees should not be required to pay for the costs of an audit, because they would incur significant costs in responding to an audit. They also contended that licensees would not be able to recover any of their costs from the copyright owners (even if the auditor discovered an overpayment), nor would they receive any financial benefit from the verification procedure that could be used to offset their costs.

The cable and satellite industries receive a substantial benefit from the statutory licensing system, insofar as it provides a mechanism for licensing the public performance and display of broadcast content without having to negotiate with the owners of that content. Moreover, the Congressional Budget Office estimated that the cost of responding to an audit "would be minimal," because the auditor would be verifying information that "is already collected and maintained by satellite and cable carriers" as a condition for using the statutory license. *See* H.R. Rep. No. 111–319, at 20 (2009). While the cost of complying with the verification procedure may be a new obligation, this is simply a cost of doing business under the statutory licensing system, much like the obligation to pay royalties and the recordkeeping and reporting requirements.

2. The Revised Proposal

AT&T, the ACA, and the NCTA offered several suggestions for improving the cost-shifting procedure, and most of those suggestions have been included in the Revised Proposal. If the auditor discovers a net aggregate underpayment [30] of more than 10 percent on the Statements of Account at issue in the audit, then the statutory licensee would be required to reimburse the copyright owners for the cost of the audit. If the licensee prepared a written response to the auditor's report and if the methodology set forth in that response indicates that there was a net aggregate underpayment between 5 percent and 10 percent of the amount reported on the Statements of Account, then the cost of the audit would be split evenly between the copyright owners and the licensee. However, if the net aggregate underpayment is less than 5 percent or if the auditor discovers an overpayment rather than an underpayment, then the participating copyright owner(s) would be required to pay for the auditor's services.

The Office did not adopt the methodology proposed by the Joint Stakeholders, because it may impose an unfair burden on small cable operators. Specifically, the Joint Stakeholders would require the licensee to pay for half the cost of the audit if the auditor discovered a net aggregate underpayment of 10 percent or less—even if the underpayment was as low as .001 percent of the amount reported on the Statements of Account. In other words, the licensee could potentially be required to pay a portion of the auditor's costs whenever there is an underpayment, regardless of the amount of that underpayment.

[30] This term is defined and discussed in section VIII(B) above.

In determining whether the minimum threshold has been met, the auditor would consider the total amount of royalties reported on all of the Statements at issue in the audit, including any overpayments or underpayments. This addresses the ACA's and the NCTA's concern that audit costs might be shifted to the statutory licensee based on a minor discrepancy on a single Statement of Account. If the auditor discovers a net aggregate underpayment in an audit of an MSO, then as discussed above, the copyright owners would be allowed to expand the scope of the audit to include other Statements filed by the systems at issue in that audit and/or other systems owned by that MSO. Although the expanded audit would be considered an extension of the initial audit, the licensee would not be required to pay for the cost of the expanded audit unless the auditor discovered a net aggregate underpayment on the Statements at issue in the expanded audit (even if the same auditor conducted both the initial audit and the expanded audit).

Consistent with AT&T's and the NCTA's recommendation, the statutory licensee would not be required to pay for any portion of the auditor's costs that exceed the amount of the net aggregate underpayment reported on its Statements of Account. This would appear to address the ACA's request for special relief for small cable operators (although the cap on audit costs would apply to large and small statutory licensees alike). For example, if the auditor discovered net aggregate underpayment of $3,000 and if that amount was more than 10 percent of the amount reported on all of the Statements of Account at issue in the audit, then the licensee would be given an opportunity to amend its Statements of Account and to deposit $3,000 (plus any applicable interest on that amount) with the Office to cover the deficiency in its initial filings. If the auditor charged $2,500 for his or her work on the audit, the licensee would be required to pay another $2,500 to a representative of the participating copyright owners to cover the cost of the audit. However, if the auditor charged $3,300 for his or her services, then licensee would be required to pay the copyright owners no more than $3,000 for the cost of the audit, and the participating copyright owners would be expected to pay the auditor $300 to cover the remaining amount.

The Office is not inclined to create a separate procedure for resolving disagreements over legal, regulatory, or accounting issues before the cost-shifting provision would be triggered (as

AT&T suggested). The Revised Proposal already protects statutory licensees by giving them an opportunity to meet and confer with the auditor, to identify errors or discrepancies in the initial draft of the auditor's report, and to prepare a written response to the auditor's conclusions before the auditor delivers his or her final report to the copyright owners. At the same time, it protects the interests of the copyright owners by giving the statutory licensee a precise deadline for reimbursing the participating copyright owners for the licensee's share of the audit costs.

The Joint Stakeholders' proposal would require the auditor to provide the participating copyright owners and the licensee with an itemized statement by the 15th of each month specifying the costs incurred by the auditor in the preceding month. The Office agrees that the participating copyright owners should provide the licensee with an itemized statement at the conclusion of the audit specifying the total costs incurred by the auditor. However, requiring the auditor to provide monthly statements could be used as an excuse for harassing the auditor and interfering with his or her conduct of the audit. The participating copyright owners could agree to provide the licensee with copies of the auditor's billing statements in the auditor's engagement letter or in a side agreement with the licensee, but the Office is not inclined to require this type of micro-management in the regulation.

As discussed above, the amount of underpayments and overpayments that may be discovered in an audit may vary depending on the size of the statutory licensee, the amount of its royalty obligations, and the accuracy of its accounting procedures. Therefore, the Office is not inclined to specify a minimum dollar amount that would be needed to shift costs from the copyright owners to the statutory licensee (as AT&T and the ACA suggested).

AT&T and DISH worried that the cost-shifting provision would encourage the auditor to look for discrepancies even where they do not exist. This does not appear to be a valid concern, because the auditor would not be entitled to collect a contingency fee based on the results of the audit. Instead, the auditor would be paid a flat fee or an hourly rate regardless of whether he or she discovers an underpayment or an overpayment on the Statements of Account. Moreover, the requirement that the auditor be a qualified and an independent certified public accountant subject to the Code of Professional Conduct of the American Institute of Certified Public Accountants should diminish significantly any concerns that the auditor would perform unnecessary procedures beyond those needed to conduct an accurate and thorough audit.

AT&T contended that the copyright owners should be required to reimburse the licensee for the costs that it incurred in responding to the audit if the auditor discovers an overpayment on a Statement of Account. The Office is not inclined to accept this proposal, because as discussed above, the Congressional Budget Office has estimated that the cost of responding to an audit request would be minimal. Moreover, the Revised Proposal contains a number of provisions that should deter copyright owners from abusing the verification procedure, such as the limit on the number of audits that may be conducted per year, the limit on the topics that the auditor may review, and the fact that the copyright owners would be required to pay for the entire cost of the audit if the auditor discovers that the licensee overpaid rather than underpaid.

AT&T also predicted that the cost-shifting provision would discourage the licensee from curing its underpayment, because making a supplemental payment could be viewed as a concession that the licensee failed to report the correct amount on its Statement of Account. That is a *non sequitur*. The Revised Proposal states that if the auditor discovers an underpayment on a Statement of Account, the licensee "may" cure that underpayment by submitting additional royalty payments, although the licensee is not required to do so.[31] Thus, the fact that the licensee may be required to reimburse the copyright owners for the cost of the audit would not appear to be an admission of liability, particularly if the licensee prepares a written response expressing its disagreement with the auditor's conclusions and declines to amend its Statement of Account or submit any supplemental payments within the time allowed.

Finally, AT&T stated that the licensee should not be required to pay for the cost of the audit unless a court determines that the licensee failed to report the correct amount on its Statement of Account.[32] The Office believes that the Revised Proposal strikes a more appropriate balance between the interests of the participating copyright owners and the statutory licensees. If the auditor determines that the licensee failed to pay and report the correct amount on its Statements of Account and if the underpayment was more than 10 percent of the total amount reported on those Statements, then the licensee would be required to pay for the cost of the audit. If the licensee disagrees with that assessment, the licensee could seek a declaratory judgment of non-infringement and an order directing the copyright owners to reimburse the licensee for the cost of the audit. Conversely, if the auditor determines that the licensee failed to pay the correct amount and if the licensee fails to deposit any additional royalties with the Office within the time allowed, the copyright owners could file an infringement action seeking damages and an injunction. In other words, both parties would need to take legal action at the conclusion of the audit if the other party disagrees with the auditor's conclusions, and the prevailing party in that dispute would be reimbursed under the Revised Proposal, regardless of whether the case is filed by the copyright owners or the licensee.

XII. Confidentiality

A. Comments

The Notice of Proposed Rulemaking explained that the auditor should be permitted to review confidential information in the course of the verification procedure, and that the auditor should be permitted to share that information with his or her employees, agents, consultants, and independent contractors, provided that they are not employees, officers, or agents of a copyright owner, and provided that those individuals enter into an appropriate confidentiality agreement governing their use of that material. *See* 77 FR 35650, June 14, 2012.

AT&T and the NCTA contended that these restrictions are insufficient. Specifically, the NCTA stated that if the auditor includes any supporting documentation in his or her final report to the copyright owners, that information should be presented in a separate appendix and it should be redacted to protect any confidential

[31] Both the Notice of Proposed Rulemaking and the Joint Stakeholders' proposal took this same approach.

[32] The Office's regulation on digital audio recording devices is the only procedure that specifically requires a "judicial determination" in order to shift costs from the copyright owners to the statutory licensee. *See* 37 CFR 201.30(i). The regulation on ephemeral recordings and the digital transmission of sound recordings states that the cost of the audit should be paid by the licensee if an independent auditor concludes that there was an underpayment of 5 percent or more. *See* 37 CFR. 260.5(f); 260.6(f). The rest of the regulations state that the costs should be shifted if it is "finally determined that there was an underpayment," without specifying whether the determination should be made by the auditor or in a judicial proceeding. *See* 37 CFR 261.6(g); 261.7(g); 262.6(g); 262.7(g).

information contained therein. (NCTA at 11–12.) AT&T contended that the auditor should be required to enter into a confidentiality agreement with the statutory licensee, and that an auditor who breaches his or her obligations under that agreement should be subject to monetary damages and injunctive relief and should be barred from conducting any additional audits for at least three years. AT&T agreed that the copyright owners should not be given access to any confidential information, but it contended that this prohibition should also apply to the copyright owners' affiliates as well as the employees, officers, and agents of any other statutory licensee that retransmits broadcast programming under sections 111 or 119. (AT&T at 10.) The Copyright Owners generally agreed that any party that is owned or controlled by another statutory licensee should not be permitted to review confidential information that may be produced during the course of an audit. (Copyright Owners at 10.)

B. Discussion

The Revised Proposal explains that access to confidential information should be limited to the auditor who conducts the verification procedure and a discrete class of persons who are listed in paragraph (m)(2)(ii) of the regulation. Specifically, the auditor would be allowed to share confidential information with his or her employees, agents, consultants, and independent contractors who need access to the information in order to perform their duties in connection with the audit. In addition, the auditor would be allowed to share confidential information with outside counsel for the participating copyright owners (including any third party consultants retained by outside counsel). Neither the auditor nor the auditor's employees, agents, consultants, and independent contractors could be employees, officers, or agents of a copyright owner for any purpose other than the audit, and any other person who receives confidential information during the course of an audit would have to implement procedures to safeguard that information.

If the auditor includes any supporting documentation in his or her final report to the copyright owners, the auditor would have to redact any confidential information contained therein, because the auditor is never allowed to share confidential information with the copyright owners. However, the auditor could provide an unredacted copy of the report to outside counsel for the participating copyright owners. Likewise, the auditor would not be allowed to share confidential information with the copyright owners' affiliates or with the employees, officers, and agents of any other statutory licensee, because those parties are not expressly mentioned in the class of persons who may be given access to confidential information under paragraph (m)(2) of the Revised Proposal.

While outside counsel and the auditor's employees, agents, consultants, and independent contractors would be required to enter into an appropriate confidentiality agreement governing the use of the confidential information, the auditor would not be subject to the same requirement (as AT&T suggested). The Office does not believe that this is necessary given that the rules of professional conduct for certified public accountants already prohibit the disclosure of confidential information.

XIII. Conclusion

The Office seeks comment from the public on the subjects discussed above related to the implementation of the audit provisions adopted by Congress with the passage of the Satellite Television Extension and Localism Act of 2010.

List of Subjects in 37 CFR Part 201

Copyright, General Provisions.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR, Chapter II, as follows:

PART 201—GENERAL PROVISIONS [AMENDED]

■ 1. The authority citation for this part reads as follows:

Authority: 17 U.S.C. 702, 17 U.S.C. 111(d)(6), and 17 U.S.C. 119(b)(2).

■ 2. Add § 201.16 to read as follows:

§ 201.16 Verification of a Statement of Account and royalty fee payments for secondary transmissions made by cable systems and satellite carriers.

(a) *General.* This section prescribes general rules pertaining to the verification of a Statement of Account and royalty fees filed with the Copyright Office pursuant to sections 111(d)(1) and 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(b) *Definitions.*

(1) The term *cable system* has the meaning set forth in § 201.17(b)(2) of this part.

(2) *MSO* means an entity that owns, controls, or operates more than one cable system.

(3) *Copyright owner* means any person or entity that owns the copyright in a work embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010, or a designated agent or representative of such person or entity.

(4) *Generally accepted auditing standards* (GAAS) means the auditing standards promulgated by the American Institute of Certified Public Accountants (AICPA).

(5) *Net aggregate underpayment* means the aggregate amount of underpayments found by the auditor less the aggregate amount of any overpayments found by the auditor, as measured against the total amount of royalties reflected on the Statements of Account examined by the auditor.

(6) *Participating copyright owner* means a copyright owner that has filed a notice of intent to audit a particular Statement of Account pursuant to paragraph (c) of this section and any other copyright owner that has given notice of its intent to participate in such audit pursuant to paragraph (d) of this section.

(7) The term *satellite carrier* has the meaning set forth in section 119(d)(6) of title 17 of the United States Code.

(8) The term *secondary transmission* has the meaning set forth in section 111(f)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(9) *Statement of Account* or *Statement* means a semiannual Statement of Account filed with the Copyright Office under section 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175, or an amended Statement of Account filed with the Office pursuant to §§ 201.11(h) or 201.17(m) of this part.

(10) *Statutory licensee* or *licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under section 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(c) *Notice of intent to audit.* Any copyright owner that intends to audit a Statement of Account for an accounting period beginning on or after January 1, 2010 must notify the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice of intent to audit may be filed by a copyright owner or a

designated agent that represents a group or multiple groups of copyright owners. The notice shall identify the statutory licensee that filed the Statement(s) with the Copyright Office, the Statement(s) and accounting period(s) that will be subject to the audit, and the party that filed the notice, including its name, address, telephone number, facsimile number, and email address, if any. In addition, the notice shall include a statement that the party owns, or represents one or more copyright owners who own, a work that was embodied in a secondary transmission made by the statutory licensee during one or more of the accounting period(s) specified in the Statement(s) of Account that will be subject to the audit. The notice of intent to audit shall be served on the statutory licensee on the same day that the notice is filed with the Copyright Office. Within 30 days after the notice has been received in the Office, the Office will publish a notice in the **Federal Register** announcing the receipt of the notice of intent to audit.

(d) *Participation by other copyright owners.* Within 30 days after a notice of intent to audit a Statement of Account is published in the **Federal Register** pursuant to paragraph (c) of this section, any other copyright owner who owns a work that was embodied in a secondary transmission made by that statutory licensee during an accounting period covered by the Statement(s) of Account referenced in the **Federal Register** notice and who wishes to participate in the audit of such Statement(s) must give written notice of such participation to the statutory licensee and to the party that filed the notice of intent to audit. The notice given pursuant to this paragraph may be filed by a copyright owner or a designated agent that represents a group or multiple groups of copyright owners, and it shall include all of the information specified in paragraph (c) of this section.

(e) *Selection of the auditor and communications with auditor during the course of the audit.* (1) The participating copyright owner(s) shall provide to the statutory licensee a list of three independent and qualified auditors, along with information reasonably sufficient for the statutory licensee to evaluate the proposed auditors' independence and qualifications including:

(i) The auditor's *curriculum vitae* and a list of audits that the auditor has conducted pursuant to section 111(d)(6) or 119(b)(2) of title 17 of the United States Code;

(ii) A list and, subject to any confidentiality or other legal restrictions, a brief description of any other work the auditor has performed for any of the participating copyright owners during the prior two calendar years;

(iii) A list identifying the participating copyright owners for whom the auditor's firm has been engaged during the prior two calendar years; and,

(iv) A copy of the engagement letter that would govern the auditor's performance of the audit and that provides for the auditor to be compensated on a non-contingent flat fee or hourly basis that does not take into account the results of the audit.

(2) The statutory licensee shall select one of the proposed auditors within five business days of receiving the list of auditors from the participating copyright owners. That auditor shall conduct the audit on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in the Statement(s) of Account identified in the notice of intent to audit.

(3) The auditor shall be qualified and independent as defined in this section. An auditor shall be considered qualified and independent if:

(i) He or she is a certified public accountant and a member in good standing with the AICPA and the licensing authority for the jurisdiction(s) where the auditor is licensed to practice;

(ii) He or she is not, for any purpose other than the audit, an officer, employee, or agent of any participating copyright owner;

(iii) He or she is independent as that term is used in the Code of Professional Conduct of the AICPA, including the Principles, Rules, and Interpretations of such Code applicable generally to attest engagements; and

(iv) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

(4) Following the selection of the auditor and until the distribution of the auditor's report to the participating copyright owner(s) pursuant to paragraph (h) of this section, there may be no *ex parte* communications regarding the audit between the selected auditor and the participating copyright owner(s) or their representatives provided, however, that the auditor may engage in such *ex parte* communications where either:

(i) The auditor has a reasonable basis to suspect fraud and that participation by the statutory licensee in communications regarding the suspected fraud would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud; or

(ii) The auditor provides the licensee with a reasonable opportunity to participate in communications with the participating copyright owner(s) or their representatives and the licensee declines to do so.

(5) Following the selection of the auditor and until 30 days after the distribution of the auditor's report to the participating copyright owner(s) and the statutory licensee pursuant to paragraph (h) of this section, the participating copyright owners may not propose a list of auditors to conduct an audit involving any other Statement of Account filed by the licensee.

(f) *Scope of the audit.* The auditor shall have exclusive authority to verify all of the information reported on the Statements of Account subject to the audit in order to confirm the correctness of the calculations and royalty payments reported therein; provided, however, that the auditor shall not determine whether any cable system properly classified any broadcast signal as required by § 201.17(e)(9)(iv) and (v) and (h) of this part or whether a satellite carrier properly determined that any subscriber or group of subscribers is eligible to receive any broadcast signals under section 119(a) of title 17 of the United States Code, as amended by Public Law 111–175. The auditor may verify the carriage of the broadcast signals on each Statement of Account after reviewing the certified list of broadcast signals provided by the statutory licensee pursuant to paragraph (g)(1) of this section. The audit shall be performed in accordance with GAAS and with consideration given to minimizing the costs and burdens associated with the audit.

(g) *Obligations of the Statutory Licensee.* (1) Within 30 days of the auditor's selection by the statutory licensee pursuant to paragraph (e)(2) of this section, the licensee shall provide the auditor and a representative of the participating copyright owner(s) with a certified list of all broadcast signals retransmitted pursuant to the statutory license in each community covered by each of the Statements of Account subject to the audit, including the call sign for each broadcast signal and each multicast signal. In the case of an audit involving a cable system or MSO, the list must include the classification of each signal on a community by community basis pursuant to

§ 201.17(e)(9)(iv) and (v) and (h) of this chapter.

(2) The statutory licensee shall provide the auditor with reasonable access to the licensee's books and records and any other information that, consistent with GAAS, the auditor needs in order to conduct his or her audit, and the statutory licensee shall provide the auditor with any information the auditor reasonably requests promptly after receiving such a request.

(3) The audit will be conducted during regular business hours at a location designated by the statutory licensee. If the auditor and statutory licensee agree, the audit may be conducted in whole or in part by means of electronic communication.

(4) The statutory licensee may suspend the audit within 30 days before the semi-annual due dates for filing Statements of Account by providing prompt written notice to the participating copyright owner(s) and the auditor; provided, however, that audit may be suspended for no more than 30 days, the licensee may not exercise this option if the auditor has delivered his or her report to the statutory licensee pursuant to paragraph (h)(1) of this section, and if the participating copyright owner(s) notify the licensee within 10 days of receiving the notice of suspension of their good faith belief that suspension of the audit could prevent the auditor from delivering his or her final report to the participating copyright owner(s) before the statute of limitations expires on any claims under the Copyright Act related to a Statement of Account covered by that audit, the statutory licensee may not suspend the audit unless it first executes a tolling agreement to extend the statute of limitations by a period of time equal to the period of time during which the audit would be suspended.

(h) *Audit report.* (1) Upon completion of the audit, the auditor shall prepare a written report setting forth his or her findings and conclusions. Prior to delivering the report to any participating copyright owner, the auditor shall deliver a copy of that report to the statutory licensee and consult with a designee of the licensee regarding the findings and conclusions set forth in the report for a period not to exceed 30 days. However, if the auditor has a reasonable basis to suspect fraud and that disclosure would, in the reasonable opinion of the auditor, prejudice investigation of such suspected fraud, the auditor may deliver a copy of the report to the participating copyright owner(s) and an abridged copy to the licensee that omits the auditor's allegation that the licensee has committed fraud.

(2) If, upon consulting with the licensee, the auditor agrees that there are errors in the report, the auditor shall correct those errors before delivering the report to the participating copyright owner(s). If the statutory licensee disagrees with any of the findings or conclusions set forth in the report, the licensee may provide the auditor with a written explanation of its good faith objections within 14 days after the last day of the consultation period.

(3) Within five business days following the last date on which the statutory licensee may provide the auditor with a written response to the report pursuant to paragraph (h)(2) of this section, and subject to the confidentiality provisions set forth in paragraph (m) of this section, the auditor shall deliver a final report to the participating copyright owner(s) and to the statutory licensee, along with a copy of the statutory licensee's written response (if any). A representative of the participating copyright owners shall promptly notify the Office that the audit has been completed and shall state whether the auditor discovered an overpayment on any of the Statements of Account at issue in the audit.

(i) *Corrections, supplemental payments, and refund.* (1) Where the final auditor's report concludes that any of the information reported on a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee payable for a particular accounting period was incorrect, or that the amount deposited in the Copyright Office for that period was too low, a statutory licensee may, within 60 days of the delivery of the final report to the participating copyright owners and the statutory licensee, or within 90 days of the delivery of such report in the case of an audit of an MSO, cure such incorrect or incomplete information or underpayment by filing an amendment to the Statement of Account and by depositing supplemental royalty fee payments utilizing the procedures set forth in § 201.11(h) or § 201.17(m) of this chapter.

(2) Notwithstanding §§ 201.17(m)(3)(i) and 201.11(h)(3)(i) of this chapter, where the final report reveals an overpayment by the statutory licensee for a particular Statement of Account, the licensee may request a refund of such overpayments within 30 days of the delivery of the final report to the participating copyright owners and the licensee by utilizing the procedures set forth in § 201.11(h)(3) or § 201.17(m)(3) of this chapter.

(j) *Costs of the audit.* (1) Except as provided in this paragraph, the participating copyright owner(s) shall pay for the full costs of the auditor. If the auditor concludes that there was a net aggregate underpayment of more than 10 percent on the Statements of Account at issue in an audit or an expanded audit, the statutory licensee shall pay the auditor's costs associated with that audit. If the statutory licensee provides the auditor with a written explanation of its good faith objections to the auditor's report pursuant to paragraph (h)(2) of this section and the net aggregate underpayment made by the statutory licensee on the basis of that explanation is not more than 10 percent and not less than 5 percent, the costs of the auditor shall be split evenly between the statutory licensee and the participating copyright owner(s); provided, however, that if a court, in a final judgment (*i.e.*, after all appeals have been exhausted) concludes there was a net aggregate underpayment exceeding 10 percent, the statutory licensee shall, subject to paragraph (j)(3) of this section, reimburse the participating copyright owner(s), within 60 days of that final judgment, for any costs of the auditor that the participating copyright owners have paid.

(2) If a statutory licensee is responsible for any portion of the costs of the auditor, a representative of the participating copyright owner(s) will provide the statutory licensee with an itemized accounting of the auditor's total costs and the statutory licensee shall reimburse such representative for the appropriate share of those costs within 30 days of the statutory licensee's payment of supplemental royalties (if applicable) or within 90 days of the delivery to the participating copyright owners and the statutory licensee of the final report, whichever is later. Notwithstanding the foregoing, if a court, in a final judgment (*i.e.*, after all appeals have been exhausted) concludes that the statutory licensee's net aggregate underpayment, if any, was 10 percent or less, the participating copyright owner(s) shall reimburse the licensee, within 60 days of the final judgment, for any costs of the auditor that the licensee has paid.

(3) No portion of the auditor's costs that exceed the amount of the net aggregate underpayment may be recovered from the statutory licensee.

(k) *Frequency of verification.* (1) Except as provided in paragraph (k)(3) of this section, no cable system, MSO, or satellite carrier shall be subject to more than one audit per calendar year and the audit of a particular cable

system or satellite carrier shall include no more than two of the Statements of Account from the previous six accounting periods submitted by that cable system or satellite carrier.

(2) Once a notice of intent to audit a Statement of Account has been received by the Office, a notice of intent to audit that same Statement will not be accepted for publication in the **Federal Register**.

(3) If the final auditor's report concludes that there has been a net aggregate underpayment of five percent or more on the audited Statements of Account of a particular cable system or satellite carrier, the participating copyright owners may audit all of the Statements of Account filed by that particular cable system or satellite carrier during the previous six accounting periods by complying with the procedures set forth in paragraphs (c) and (d) of this section. The expanded audit may be conducted by the same auditor that performed the initial audit, provided that the participating copyright owner(s) provide the statutory licensee with updated information reasonably sufficient to allow the licensee to determine that there has been no material change in the auditor's independence and qualifications. In the alternative, the expanded audit may be conducted by an auditor selected by the licensee pursuant to the procedures set forth in paragraph (e) of this section.

(4) An audit of an MSO shall be limited to a sample of no more than 10 percent of the MSO's Form 3 cable systems and no more than 10 percent of the MSO's Form 2 systems, except that if the auditor concludes that there was a net aggregate underpayment of five percent or more on the Statements of Account at issue in an audit:

(i) The number of Statements of Account of a particular cable system subject to audit in a calendar year may be expanded in accordance with paragraph (k)(3) of this section; and

(ii) The sample of cable systems that may be audited in a calendar year may be expanded in the following calendar year to include a sample of 30 percent of the MSO's Form 3 cable systems and 30 percent of the MSO's Form 2 cable systems.

(l) *Retention of records.* For each Statement of Account that a statutory licensee files with the Copyright Office for accounting periods beginning on or after January 1, 2010, the statutory licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in each Statement for at least three and one-half years after the last day of the year in which that Statement or an amendment of that Statement was filed with the Office and, in the event that such Statement or amendment is the subject of an audit conducted pursuant to this section, for three years after the auditor delivers the final report to the participating copyright owner(s) and the statutory licensee.

(m) *Confidentiality.* (1) For purposes of this section, confidential information shall include any non-public financial or business information pertaining to a Statement of Account that has been subjected to an audit under section 111(d)(6) or 119(h)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(2) Access to confidential information under this section shall be limited to:

(i) The auditor; and

(ii) Subject to executing a reasonable confidentiality agreement, outside counsel for the participating copyright owners and any third party consultants retained by outside counsel, and any employees, agents, consultants, or independent contractors of the auditor who are not employees, officers, or agents of a participating copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement of Account or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment;

(3) The auditor and any person identified in paragraph (m)(2)(ii) of this section shall implement procedures to safeguard all confidential information received from any third party in connection with an audit, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the auditor or such person.

Dated: May 2, 2013.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2013–11020 Filed 5–8–13; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO25

Duty Periods for Establishing Eligibility for Health Care

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical regulations concerning eligibility for health care to re-establish the definitions of "active military, naval, or air service," "active duty," and "active duty for training." These definitions were deleted in 1996; however, we believe that all duty periods should be defined in part 17 of the Code of Federal Regulations (CFR) to ensure proper determination of eligibility for VA health care. We would also provide a more complete definition of "inactive duty training."

DATES: Comments must be received by VA on or before July 8, 2013.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AO25—Duty Periods for Establishing Eligibility for Health Care." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office (10NB6), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1710 and 1705, VA provides health care to certain veterans. Section 101(2) of title 38, U.S.C., defines the term "veteran" to mean "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." "Active military, naval, or air service" includes "active duty" and certain periods of "active duty for training" and "inactive duty training," which are all defined in 38 U.S.C. 101. See 38 U.S.C. 101(21)–(24). These terms prescribe the type of service an individual needs to have had in order to be eligible for VA health care benefits. We would incorporate the full definitions of these terms found in 38

U.S.C. 101(21) through (24) into 38 CFR 17.31, VA's regulation for defining duty periods applicable to eligibility for medical benefits.

On May 13, 1996, in 61 FR 21965, VA removed and marked as reserved paragraphs (a) through (c) of § 17.31. These paragraphs contained the definitions of "active military, naval, or air service," "active duty," and "active duty for training," which reflected the statutory definitions of those terms in 38 U.S.C. 101. At that time, in an effort to streamline its regulations, VA determined that paragraphs (a) through (c) of § 17.31 were unnecessary because they merely restated the definitions found in 38 U.S.C. 101(21), 101(22), and 101(24) almost verbatim. It is not clear why VA retained paragraph (d), containing a definition for "inactive duty training," which also restated most of 38 U.S.C. 101(23) almost verbatim. Currently, the introductory paragraph to § 17.31 states that the regulation contains "[d]efinitions of duty periods applicable to eligibility for medical benefits." However, it contains only an incomplete definition for inactive duty training. A reader of § 17.31 could conclude that no other duty periods, aside from "inactive duty training," would qualify an individual as eligible for VA medical benefits. This is not an accurate representation of VA's authority. An individual could be eligible for VA medical benefits based on only certain periods of inactive duty training (i.e., if the individual was disabled from an injury or covered disease during such training), which the current regulation does not make clear. An individual could also be eligible for VA medical benefits based on active duty or certain periods of active duty for training.

We propose to incorporate the 38 U.S.C. 101 definitions of "active military, naval, or air service," "active duty," and "active duty for training" into § 17.31 as paragraphs (a) through (c). We also propose to incorporate 38 U.S.C. 106, which establishes certain other service as active military service. However, these statutory provisions are not exhaustive.

We would also incorporate a listing of individuals and groups the Secretary of Defense, through the Secretary of the Air Force acting as Executive Agent of the Secretary of Defense, has determined to have performed active military service. Under the provisions of Public Law 95–202, sec. 401 (1977), the Department of Defense (DoD) can determine that the service of certain groups or individuals constitutes active duty service for purposes of title 38 benefits. DoD has outlined regulations at 32 CFR part 47 that explain how the determination that a group or individual is considered to have performed active duty service is made. These decisions are published in the **Federal Register**. 32 CFR 47.6(b)(5). Also, under 32 CFR 47.5(b)(9), the Secretary of Veterans Affairs is notified when DoD determines that a group or individual is considered to have performed active duty service.

Proposed paragraph (b) would include service by any individual or group certified by the Secretary of Defense as active duty, which is currently listed in 38 CFR 3.7. The following table includes a list of the relevant groups (in alphabetical order) and the effective date of recognition for each group, as well as a citation to the applicable **Federal Register** notice describing the decision by the Secretary of Air Force. The only exception with respect to the **Federal Register** citations is the recognition of the "Quartermaster Corps Keswick Crew on Corregidor (WWII)," which recognition does not appear to have been published in the **Federal Register**. In that case, we have cited the DoD memorandum recognizing the group. We would also incorporate a statement in paragraph (b)(6) to reflect subsequent acts of recognition by DoD.

Individuals and groups designated by the Secretary of Air Force as having performed active military service	Individual or group recognition date	**Federal Register** citation or authority recognizing the individual or group
American Merchant Marine in Oceangoing Service during the period of Armed Conflict, December 7, 1941, to August 15, 1945.	Recognized effective January 19, 1988.	53 FR 2775.
The approximately 50 Chamorro and Carolinian former native policemen who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6th Provisional Military Police Battalion to accompany United States Marines on active, combat-patrol activity from August 19, 1945, to September 2, 1945.	Recognized effective September 30, 1999.	64 FR 56773.
Civilian Crewmen of the United States Coast and Geodetic Survey (USCGS) vessels who performed their service in areas of immediate military hazard while conducting cooperative operations with and for the U.S. Armed Forces within a time frame of December 7, 1941, to August 15, 1945. Qualifying USCGS vessels specified by the Secretary of the Air Force, are the Derickson, Explorer, Gilbert, Hilgard, E. Lester Jones, Lydonia, Patton, Surveyor, Wainwright, Westdahl, Oceanographer, Hydrographer, or Pathfinder.	Recognized effective April 8, 1991	56 FR 23054, 57 FR 24600.
Civilian Employees of Pacific Naval Air Bases who actively participated in Defense of Wake Island during World War II.	Recognized effective January 22, 1981.	46 FR 11857.
Civilian Navy Identification Friend or Foe (IFF) Technicians who served in the Combat Areas of the Pacific during World War II. (December 7, 1941, to August 15, 1945.).	Recognized effective August 2, 1988.	53 FR 32425.
Civilian personnel assigned to the Secret Intelligence Element of the Office of Strategic Services (OSS).	Recognized effective December 27, 1982.	48 FR 1532.
Engineer Field Clerks (World War I)	Recognized effective August 31, 1979.	44 FR 55622.
Guam Combat Patrol	Recognized effective May 10, 1983.	48 FR 23295.
Honorably discharged members of the American Volunteer Group (Flying Tigers) who served during the period December 7, 1941, to July 18, 1942.	Recognized effective May 3, 1991	56 FR 26072.
Honorably discharged members of the American Volunteer Guard, Eritrea Service Command during the Period June 21, 1942, to March 31, 1943.	Recognized effective June 29, 1992.	57 FR 34766.

Individuals and groups designated by the Secretary of Air Force as having performed active military service	Individual or group recognition date	**Federal Register** citation or authority recognizing the individual or group
Male Civilian Ferry Pilots	Recognized effective July 17, 1981.	46 FR 39197.
The Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from December 7, 1941, through August 15, 1945.	Recognized effective August 27,1999.	64 FR 53364.
Quartermaster Corps Female Clerical Employees serving with the American Expeditionary Forces in World War II.	Recognized effective January 22, 1981.	46 FR 11857.
Quartermaster Corps Keswick Crew on Corregidor (World War II)	Recognized effective February 7, 1984.	Memorandum from the Acting Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations), Determination of Active Military Service (Feb. 7, 1984) (on file with DoD Civilian/Military Service Review Board).
Reconstruction Aides and Dietitians in World War I	Recognized effective July 6, 1981	46 FR 37306.
Signal Corps Female Telephone Operators Unit of World War I	Recognized effective May 15, 1979.	44 FR 32019.
Three scouts/guides, Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz, who assisted the U.S. Marines in the offensive operations against the Japanese on the Northern Mariana Islands from June 19, 1944, through September 2, 1945.	Recognized effective September 30, 1999.	64 FR 56773.
U.S. civilian employees of American Airlines who served overseas as a result of American Airlines' Contract with the Air Transport Command (ATC) during the period December 14, 1941, through August 14, 1945.	Recognized effective October 5, 1990.	55 FR 46706.
U.S. civilian female employees of the U.S. Army Nurse Corps while serving in the Defense of Bataan and Corregidor during the period January 2, 1942, to February 3, 1945.	Recognized effective December 13, 1993.	59 FR 298.
U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, who served overseas in the North Atlantic or under the jurisdiction of the North Atlantic Wing, ATC, as a result of a Contract with the ATC during the period February 26, 1942, through August 14, 1945.	Recognized effective June 2, 1997	62 FR 36263.
U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division), who served overseas as a result of a Contract with the ATC during the period December 14, 1941, through August 14, 1945.	Recognized effective June 29, 1992.	57 FR 34765.
U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, who served overseas as a result of Northeast Airlines' Contract with the ATC during the period December 7, 1941, through August 14, 1945.	Recognized effective June 2, 1997	62 FR 36263.
U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, who served overseas as a result of Northwest Airlines' Contract with the ATC during the period December 14, 1941, through August 14, 1945.	Recognized effective December 13, 1993.	59 FR 297.
U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and its Subsidiaries and Affiliates, who served overseas as a result of Pan American's Contract with the ATC and Naval Air Transport Service during the period December 14, 1941, through August 14, 1945.	Recognized effective July 16, 1992.	57 FR 34765.
U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., who served overseas as a result of TWA's Contract with the ATC during the period December 14, 1941, through August 14, 1945. The "Flight Crew" includes pursers.	Recognized effective May 13, 1992.	57 FR 24479, 68 FR 11068
U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), who served overseas as a result of UAL's Contract with the ATC during the period December 14, 1941, through August 14, 1945.	Recognized effective May 13, 1992.	57 FR 24478.
U.S. civilian volunteers who actively participated in the Defense of Bataan.	Recognized effective February 7, 1984.	49 FR 7849.
U.S. civilians of the American Field Service (AFS) who served overseas operationally in World War I during the period August 31, 1917, to January 1, 1918.	Recognized effective August 30, 1990.	55 FR 46707.
U.S. civilians of the AFS who served overseas under U.S. Armies and U.S. Army Groups in World War II during the period December 7, 1941, through May 8, 1945.	Recognized effective August 30, 1990.	55 FR 46707.
U.S. Merchant Seamen who served on blockships in support of Operation Mulberry.	Recognized effective October 18, 1985.	50 FR 46332.
Wake Island Defenders from Guam	Recognized effective April 7, 1982	47 FR 17324.

Individuals and groups designated by the Secretary of Air Force as having performed active military service	Individual or group recognition date	**Federal Register** citation or authority recognizing the individual or group
Women's Army Auxiliary Corps (WAAC)	Recognized effective March 18, 1980.	45 FR 23716, 45 FR 26115.

We also propose to list in paragraph (b) service by other individuals and groups specifically identified by Congress, or determined by court or VA decisions interpreting applicable legislative provisions, as constituting active military service. These other individuals and groups are currently listed in various paragraphs of current § 3.7. See 38 CFR 3.7(a)–(l), (n)–(q), (s)–(w). We propose to include in § 17.31(b) service by these individuals and groups from § 3.7, which would provide a more complete definition of active duty for purposes of determining eligibility for VA health care. This improves the accessibility of the information and clarifies who can receive VA health care.

For purposes of determining eligibility for medical services, proposed paragraph (b)(50) would recognize as active duty service by a Commonwealth Army veteran or new Philippine Scout, as defined in 38 U.S.C. 1735, who resides in the United States and is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence. Although 38 U.S.C. 107 provides that service by Commonwealth Army veterans and new Philippine Scouts is deemed to have been active military, naval, or air service only for purposes of certain specified benefits, 38 U.S.C. 1734 authorizes VA to furnish hospital and nursing home care and medical services to Commonwealth Army veterans and new Philippine Scouts. Proposed paragraph (b)(50) would also recognize as active duty service by Regular Philippine Scouts and service in the Insular Force of the Navy, Samoan Native Guard, or Samoan Native Band of the Navy, as referenced in 38 CFR 3.40(a). See 38 CFR 3.7(p).

Proposed paragraph (b)(57) would recognize as active duty certain attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy, as covered under 38 CFR 3.6(b)(5). Proposed paragraph (b)(60) would also recognize as active duty the period of time immediately following the date an individual is discharged or released from a period of active duty, consistent with 38 U.S.C. 106(c).

In addition to the 38 U.S.C. 101(22) definition of the term "active duty for training," proposed paragraph (c) would include certain attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy, consistent with 38 CFR 3.6(c)(5). We would also include certain authorized travel to or from the place of active duty for training and list the factors for consideration in determining whether an individual satisfies specific conditions, consistent with 38 U.S.C. 106(d).

We also propose to correct an oversight. The National Defense Authorization Act, Fiscal Year 1989 (the "1989 Act"), Public Law 100–456, sec. 633 (1988), amended the definition of "inactive duty training" in 38 U.S.C. 101(23) to include members of, or applicants for membership in, the Senior Reserve Officers' Training Corps (SROTC). Paragraph (d) of § 17.31 defines inactive duty for training. However, § 17.31(d) was not amended to reflect the changes made by the 1989 Act. Although the current definition of "inactive duty training" does not include training by members of, or applicants for membership in the SROTC, in accordance with the updated statute, VA has been considering training by these groups of individuals "inactive duty training." We, therefore, propose to amend § 17.31(d) to reflect the complete statutory definition. We propose to redesignate current paragraph (d)(4) as (d)(5) and add a new paragraph (d)(4) to state that "[t]raining (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10 U.S.C." is considered "inactive duty training."

Consistent with 38 U.S.C. 106(d), we propose to add paragraph (d)(6) to state that travel to or from the place of inactive duty training shall also be considered inactive duty training only if an individual, when authorized or required by competent authority, assumes an obligation to perform inactive duty training and is disabled from an injury, acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident incurred while proceeding directly to or returning directly from such inactive duty training. We would also list the factors for consideration in determining whether an individual satisfies these conditions. See 38 U.S.C. 106(d)(2).

We also propose to add an authority citation for § 17.31, which would indicate that the statutory authorities for § 17.31 are 38 U.S.C. 101, 106, 501, 1734 and 1735. We would add sections 1734 and 1735 because section 1734 is the Veterans Health Administration's authority for providing health care to Commonwealth Army veterans and Philippine Scouts, while 1735 defines these two groups of veterans.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, and other advantages, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rulemaking are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on May 3, 2013 for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Government contracts; Grant programs-health; Grant programs-veterans; Health care; Health facilities; Health professions; Health records; Homeless; Mental health programs; Nursing homes; Philippines, Reporting and recordkeeping requirements; Veterans.

Dated: May 6, 2013.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.31 by:
■ a. Adding paragraphs (a) through (c).
■ b. Revising paragraph (d) introductory text.
■ c. Redesignating current paragraph (d)(4) as paragraph (d)(5).
■ d. Adding new paragraphs (d)(4) and (d)(6).
■ e. Adding an authority citation at the end of the section.

The revision and additions read as follow:

§ 17.31 Duty periods defined.

* * * * *

(a) *Active military, naval, or air service* includes:

(1) Active duty.

(2) Any period of active duty for training during which the individual was disabled from a disease or injury incurred or aggravated in line of duty.

(3) Any period of inactive duty training during which the individual was disabled from an injury incurred or aggravated in line of duty.

(4) Any period of inactive duty training during which the individual was disabled from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such period of inactive duty training.

(b) *Active duty* means:

(1) Full-time duty in the Armed Forces, other than active duty for training.

(2) Full-time duty, other than for training purposes, as a commissioned officer of the Regular or Reserve Corps of the Public Health Service during the following dates:

(i) On or after July 29, 1945;

(ii) Before July 29, 1945, under circumstances affording entitlement to full military benefits; or

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organizations, the Coast and Geodetic Survey or the Environmental Science Services Administration, during the following dates:

(i) On or after July 29, 1945;

(ii) Before July 29, 1945, under the following circumstances:

(A) While on transfer to one of the Armed Forces;

(B) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard; or

(C) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter; or

(4) Service as a cadet at the U.S. Military, Air Force, or Coast Guard Academy, or as a midshipman at the U.S. Naval Academy.

(5) Service in Women's Army Auxiliary Corps (WAAC). Recognized effective March 18, 1980.

(6) Service of any person in a group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, if the Secretary of Defense:

(i) Determines that the service of such group constituted active military service; and

(ii) Issues to each member of such group a discharge from such service under honorable conditions where the nature and duration of the service of such member so warrants.

(7) Service in American Merchant Marine in Oceangoing Service any time during the period December 7, 1941, to August 15, 1945. Recognized effective January 19, 1988.

(8) Service by the approximately 50 Chamorro and Carolinian former native policemen who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6th Provisional Military Police Battalion to accompany U.S. Marines on active, combat-patrol activity any time during the period August 19, 1945, to September 2, 1945. Recognized effective September 30, 1999.

(9) Service by Civilian Crewmen of the U.S. Coast and Geodetic Survey (USCGS) vessels, who performed their service in areas of immediate military hazard while conducting cooperative operations with and for the U.S. Armed Forces any time during the period December 7, 1941, to August 15, 1945. Qualifying USCGS vessels specified by the Secretary of the Air Force are the Derickson, Explorer, Gilbert, Hilgard, E. Lester Jones, Lydonia, Patton, Surveyor, Wainwright, Westdahl, Oceanographer, Hydrographer, or Pathfinder. Recognized effective April 8, 1991.

(10) Service by Civilian Employees of Pacific Naval Air Bases who actively participated in Defense of Wake Island during World War II. Recognized effective January 22, 1981.

(11) Service by Civilian Navy Identification Friend or Foe (IFF) Technicians who served in the Combat Areas of the Pacific any time during the period December 7, 1941, to August 15, 1945. Recognized effective August 2, 1988.

(12) Service by Civilian personnel assigned to the Secret Intelligence Element of the Office of Strategic Services (OSS). Recognized effective December 27, 1982.

(13) Service by Engineer Field Clerks (World War I). Recognized effective August 31, 1979.

(14) Service by Guam Combat Patrol. Recognized effective May 10, 1983.

(15) Service by Honorably discharged members of the American Volunteer Group (Flying Tigers) who served any time during the period December 7, 1941, to July 18, 1942. Recognized effective May 3, 1991.

(16) Service by Honorably discharged members of the American Volunteer Guard, Eritrea Service Command who served any time during the period June 21, 1942, to March 31, 1943. Recognized effective June 29, 1992.

(17) Service by Male Civilian Ferry Pilots. Recognized effective July 17, 1981.

(18) Service with the Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps any time during the period December 7, 1941, to August 15, 1945. Recognized effective August 27, 1999.

(19) Service by Quartermaster Corps Female Clerical Employees serving with the American Expeditionary Forces in World War II. Recognized effective January 22, 1981.

(20) Service by Quartermaster Corps Keswick Crew on Corregidor (World War II). Recognized effective February 7, 1984.

(21) Service by Reconstruction Aides and Dietitians in World War I. Recognized effective July 6, 1981.

(22) Service by Signal Corps Female Telephone Operators Unit of World War I. Recognized effective May 15, 1979.

(23) Service by three scouts/guides, Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz, who assisted the U.S. Marines in the offensive operations against the Japanese on the Northern Mariana Islands from June 19, 1944, through September 2, 1945. Recognized effective September 30, 1999.

(24) Service by U.S. civilian employees of American Airlines who served overseas as a result of American Airlines' Contract with the Air Transport Command any time during the period December 14, 1941, to August 14, 1945. Recognized effective October 5, 1990.

(25) Service by U.S. civilian female employees of the U.S. Army Nurse Corps while serving in the Defense of Bataan and Corregidor any time during the period January 2, 1942, to February 3, 1945. Recognized effective December 13, 1993.

(26) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, who served overseas in the North Atlantic or under the jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a result of a Contract with the ATC any time during the period February 26, 1942, to August 14, 1945. Recognized effective June 2, 1997.

(27) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division), who served overseas as a result of a Contract with the Air Transport Command any time during the period December 14, 1941, to August 14, 1945. Recognized effective June 29, 1992.

(28) Service by U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, who served overseas as a result of Northeast Airlines' Contract with the Air Transport Command any time during the period December 7, 1941, to August 14, 1945. Recognized effective June 2, 1997.

(29) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, who served overseas as a result of Northwest Airlines' Contract with the Air Transport Command any time during the period December 14, 1941, to August 14, 1945. Recognized effective December 13, 1993.

(30) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and its Subsidiaries and Affiliates, who served overseas as a result of Pan American's Contract with the Air Transport Command and Naval Air Transport Service any time during the period December 14, 1941, to August 14, 1945. Recognized effective July 16, 1992.

(31) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., who served overseas as a result of TWA's Contract with the Air Transport Command any time during the period December 14, 1941, to August 14, 1945. The "Flight Crew" includes pursers. Recognized effective May 13, 1992.

(32) Service by U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), who served overseas as a result of UAL's Contract with the Air Transport Command any time during the period December 14, 1941, to August 14, 1945. Recognized effective May 13, 1992.

(33) Service by U.S. civilian volunteers who actively participated in the Defense of Bataan. Recognized effective February 7, 1984.

(34) Service by U.S. civilians of the American Field Service (AFS) who served overseas operationally in World War I any time during the period August 31, 1917, to January 1, 1918. Recognized effective August 30, 1990.

(35) Service by U.S. civilians of the American Field Service (AFS) who served overseas under U.S. Armies and U.S. Army Groups in World War II any time during the period December 7, 1941, to May 8, 1945. Recognized effective August 30, 1990.

(36) Service by U.S. Merchant Seamen who served on blockships in support of Operation Mulberry. Recognized effective October 18, 1985.

(37) Service by Wake Island Defenders from Guam. Recognized effective April 7, 1982.

(38) Service by Women's Air Forces Service Pilots (WASP). Recognized effective November 23, 1977.

(39) Service by persons who were injured while providing aerial

transportation of mail and serving under conditions set forth in Public Law 73–140.

(40) Service in the Alaska Territorial Guard during World War II, for any person who the Secretary of Defense determines was honorably discharged.

(41) Service by Army field clerks.

(42) Service by Army Nurse Corps, Navy Nurse Corps, and female dietetic and physical therapy personnel as follows:

(i) Female Army and Navy nurses on active service under order of the service department; or

(ii) Female dietetic and physical therapy personnel, excluding students and apprentices, appointed with relative rank after December 21, 1942, or commissioned after June 21, 1944.

(43) Service by students who were enlisted men in Aviation camps during World War I.

(44) Active service in the Coast Guard after January 28, 1915, while under the jurisdiction of the Treasury Department, the Navy Department, the Department of Transportation, or the Department of Homeland Security. This does not include temporary members of the Coast Guard Reserves.

(45) Service by contract surgeons if the disability was the result of injury or disease contracted in the line of duty during a period of war while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transit, or in a hospital.

(46) Service by field clerks of the Quartermaster Corps.

(47) Service by lighthouse service personnel who were transferred to the service and jurisdiction of the War or Navy Departments by Executive Order under the Act of August 29, 1916. Effective July 1, 1939, service was consolidated with the Coast Guard.

(48) Service by male nurses who were enlisted in a Medical Corps.

(49) Service by persons having a pensionable or compensable status before January 1, 1959.

(50) Service by a Commonwealth Army veteran or new Philippine Scout, as defined in 38 U.S.C. 1735, who resides in the United States and is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; service by Regular Philippine Scouts and service in the Insular Force of the Navy, Samoan Native Guard, or Samoan Native Band of the Navy.

(51) Service with the Revenue Cutter Service while serving under direction of the Secretary of the Navy in cooperation with the Navy. Effective January 28, 1915, the Revenue Cutter Service was merged into the Coast Guard.

(52) Service during World War I in the Russian Railway Service Corps as certified by the Secretary of the Army.

(53) Service by members of training camps authorized by section 54 of the National Defense Act (Pub. L. 64–85, 39 Stat. 166), except for members of Student Army Training Corps Camps at the Presidio of San Francisco; Plattsburg, New York; Fort Sheridan, Illinois; Howard University, Washington, DC; Camp Perry, Ohio; and Camp Hancock, Georgia, from July 18, 1918, to September 16, 1918.

(54) Service in the Women's Army Corps (WAC) after June 30, 1943.

(55) Service in the Women's Reserve of the Navy, Marine Corps, and Coast Guard.

(56) Effective July 28, 1959, service by a veteran who was discharged for alienage during a period of hostilities unless evidence affirmatively shows the veteran was discharged at his or her own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he or she is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under 10 U.S.C. 1552 and 1553 will be considered as evidence that the discharge was not at the alien's request.

(57) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy for enlisted active duty members who are reassigned to a preparatory school without a release from active duty, and for other individuals who have a commitment to active duty in the Armed Forces that would be binding upon disenrollment from the preparatory school.

(58) For purposes of providing medical care under chapter 17 for a service-connected disability, service by any person who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty and:

(i) Who has applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service;

(ii) Who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of the person's local draft board and before rejection; or

(iii) Who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service.

Note to paragraph (b)(58): The injury or disease must be due to some factor relating to compliance with proper orders. Draftees and selectees are included when reporting for preinduction examination or for final induction on active duty. Such persons are not included for injury or disease suffered during the period of inactive duty, or period of waiting, after a final physical examination and prior to beginning the trip to report for induction. Members of the National Guard are included when reporting to a designated rendezvous.

(59) Authorized travel to or from such duty or service, as described in this section.

(60) The period of time immediately following the date an individual is discharged or released from a period of active duty, as determined by the Secretary concerned to have been required for that individual to proceed to that individual's home by the most direct route, and in any event until midnight of the date of such discharge or release.

(c) *Active duty for training* means:

(1) Full-time duty in the Armed Forces performed by Reserves for training purposes.

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health service during the period covered in paragraph (b)(2) of this section.

(3) In the case of members of the Army National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of title 32 U.S.C., or the prior corresponding provisions of law.

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 U.S.C. for a period of not less than four weeks and which must be completed by the member before the member is commissioned.

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy by an individual who enters the preparatory school directly from the Reserves, National Guard or civilian life, unless the individual has a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.

(6) Authorized travel to or from such duty as described in paragraph (c) of this section if an individual, when

authorized or required by competent authority, assumes an obligation to perform active duty for training and is disabled from an injury, acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident incurred while proceeding directly to or returning directly from such active duty for training. Authorized travel should take into account:

(i) The hour on which such individual began so to proceed or to return;

(ii) The hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty;

(iii) The method of travel employed;

(iv) The itinerary;

(v) The manner in which the travel was performed; and

(vi) The immediate cause of disability.

(**Note:** Active duty for training does not include duty performed as a temporary member of the Coast Guard Reserve.)

(d) *Inactive duty training* means:

* * * * *

(4) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10 U.S.C.

* * * * *

(6) Travel to or from such duty as described in this paragraph (d) if an individual, when authorized or required by competent authority, assumes an obligation to perform inactive duty training and is disabled from an injury, acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident incurred while proceeding directly to or returning directly from such inactive duty training. Authorized travel should take into account:

(i) The hour on which such individual began so to proceed or to return;

(ii) The hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty;

(iii) The method of travel employed;

(iv) The itinerary;

(v) The manner in which the travel was performed; and

(vi) The immediate cause of disability.

(Authority: 38 U.S.C. 101, 106, 501, 1734 and 1735.)

[FR Doc. 2013–11051 Filed 5–8–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0206; FRL–9809–3]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Parish of Pointe Coupee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) concerning a maintenance plan addressing the 1997 8-hour ozone standard for the parish of Pointe Coupee. On February 28, 2007, the State of Louisiana submitted a SIP revision containing a maintenance plan for the 1997 ozone standard for Pointe Coupee Parish. This plan ensures the continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for this area under the 2008 standard will be addressed in future actions. This maintenance plan meets statutory and regulatory requirements, and is consistent with EPA's guidance.

DATES: Written comments must be received on or before June 10, 2013.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk or Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164 or (214) 665–7367; fax number 214–665–7263; email address *belk.ellen@epa.gov* or *rennie.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 24, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–10834 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA–R03–OAR–2013–0132; FRL–9809–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC–MD–VA Moderate Nonattainment Area; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a notice published on March 20, 2013. In the March 20, 2013 notice of proposed rulemaking, EPA proposed to approve the attainment demonstration portion of the attainment plan for the Washington DC–MD–VA (Washington area) ozone nonattainment area submitted by the District of Columbia, the State of Maryland and the Commonwealth of Virginia as revisions to each of their State Implementation Plans (SIPs). At the request of the Maryland Department of the Environment (MDE), EPA is reopening the comment period. Comments

submitted between the close of the original comment period and the re-opening of this comment period will be accepted and considered.

DATES: The comment period for the proposed rule published on March 20, 2013 (78 FR 17161) is reopened through June 10, 2013. All comments received on or before June 10, 2013 will be entered into the public record and considered by EPA before taking final action on the proposed rule.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0132 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0132, Cristina Fernandez, Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0132. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the States' submittals are available at the District of Columbia, Department of the Environment, Air Quality Division, 1200 1st Street, NE 5th floor, Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by email at *cripps.christopher@epa.gov.* Please note that while questions on this reopening of the comment period for the proposed approval of the attainment demonstration portion of attainment plans for the Washington area may be posed via telephone and email, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

Dated: April 24, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–11058 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0117; A–1–FRL–9810–1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the ozone attainment demonstrations (including the reasonably available control measures (RACM) analyses) submitted by Connecticut as a State Implementation Plan (SIP) revision on February 1, 2008 to meet Clean Air Act requirements for attaining the 1997 8-hour ozone national ambient air quality standard. EPA is proposing to approve Connecticut's demonstrations of attainment of the 1997 8-hour ozone standard for Connecticut's portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 1997 moderate ozone nonattainment area and for the Greater Connecticut moderate ozone nonattainment area. EPA is also proposing to approve the RACM analyses for these same areas.

DATES: Written comments must be received on or before June 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0117 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* "Docket Identification Number EPA–R01–OAR–2008–0117," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier. Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2008–0117. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an

"anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit; U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "Agency," "we," "us," or "our" is used, we mean the EPA.

Table of Contents

I. What actions is EPA proposing?

EPA is proposing to approve Connecticut's February 1, 2008 SIP revision which demonstrates attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard)[1] for Connecticut's portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT moderate ozone nonattainment area (also called the New York City area) and for the Greater Connecticut moderate ozone nonattainment area. EPA is also proposing to approve the associated RACM analyses for these same areas. The EPA is proposing to approve Connecticut's 1997 8-hour ozone attainment demonstrations and RACM analyses, because the EPA has determined that both the New York City and Greater Connecticut moderate ozone nonattainment areas attained the 1997 8-hour ozone NAAQS by their attainment deadline.

II. What is the background for EPA's proposed actions?

A. History of Connecticut Ozone Attainment Demonstrations.

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the New York City area. The New York City moderate ozone nonattainment area is composed of: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey; Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York; and Fairfield, Middlesex, and New Haven Counties in Connecticut. See 40 CFR 81.307, 81.331, and 81.333. In addition, the remaining five counties in Connecticut were also designated nonattainment, as the Greater Connecticut moderate ozone nonattainment area. See 40 CFR 81.307.

Also, on April 30, 2004 (69 FR 23951), EPA promulgated the Phase 1 8-hour ozone implementation rule which provided how areas designated nonattainment for the 1997 8-hour ozone standard would be classified. These designations triggered the Clean Air Act (CAA or Act) requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) (Phase 2 Rule) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. 40 CFR 51.908(a).

Although the focus of this proposed action is on attainment demonstrations and RACM analyses for the 1997 8-hour ozone standard, we note that EPA has subsequently revised the ozone standard. On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years) to provide increased protection of public health

[1] Unless otherwise specifically noted in this action, references to the 8-hour ozone standard are to the 0.08 parts per million (ppm) ozone standard promulgated in 1997.

and the environment.[2] The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but are set at a more protective level. State emission reduction efforts already underway to meet the 1997 8-hour ozone standard will continue with implementation of the 2008 ozone NAAQS.

B. Moderate Nonattainment Area Requirements.

EPA's November 29, 2005 Phase 2 ozone implementation rule addresses, among other things, the control obligations that apply to areas designated nonattainment for the 1997 8-hour NAAQS. The Phase 1 and Phase 2 ozone implementation rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, modeling and attainment demonstrations with projection year emission inventories were due by June 15, 2007, along with reasonable further progress (RFP) plans, RACM, motor vehicle emissions budgets and contingency measures (40 CFR 51.908(a) and (c), 51.910, 51.912). In addition, moderate nonattainment areas were also required to submit a reasonably available control technology (RACT) SIP. This action addresses Connecticut's demonstrations of attainment of the 1997 8-hour ozone standard, and the RACM analyses. Moderate nonattainment areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. See 40 CFR 51.903. In order to demonstrate attainment by June 2010, the area must adopt and implement all controls necessary for attainment by the beginning of the 2009 ozone season and demonstrate that the level of the standard will be met during the 2009 ozone season.

C. Why is EPA proposing these actions?

On August 31, 2010 (75 FR 53219), EPA made a determination that the Greater Connecticut area had attained the 1997 8-hour ozone NAAQS. Similarly, on June 18, 2012 (77 FR 36163), EPA made a determination that the New York City area had attained the 1997 8-hour ozone NAAQS. Pursuant to 40 CFR 51.918, these "clean data" determinations suspend the requirements for various SIP items, including, the requirement to submit an attainment demonstration, an RFP plan, and section 172(c)(9) contingency measures for the eight-hour ozone NAAQS for so long as an area continues to attain the ozone NAAQS. However, section 110(k)(2) of the CAA requires EPA to take action on any administratively complete SIP revision submittal within 12 months of the SIP being deemed complete. Therefore, while the clean data determinations suspend the state's obligation to submit the attainment demonstration SIP revision, the determinations do not suspend EPA's obligation to take action on the SIP revision if it has been submitted by the state and deemed to be complete. This proposed rulemaking is intended to address EPA's obligations on Connecticut's February 1, 2008 SIP revision.

III. What was included in Connecticut's SIP submittal?

After completing the appropriate public notice and comment procedures, Connecticut made a series of submittals in order to address the Act's 1997 8-hour ozone nonattainment requirements.

On December 8, 2006, Connecticut submitted its state-wide 8-hour ozone RACT SIP, for both volatile organic compounds and oxides of nitrogen, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard and also included commitments to adopt revisions to several regulations where the State identified more stringent emission limitations that it believed should now be considered RACT.

On February 1, 2008, Connecticut submitted a SIP that included ozone attainment demonstrations for the 1997 8-hour ozone standard, RFP plans, motor vehicle emissions budgets, contingency measures and RACM analyses for the Connecticut portion of the New York City area and the Greater Connecticut area. Connecticut's attainment demonstrations and RACM analyses are the only subjects of this proposed rulemaking.

On August 22, 2012 (77 FR 50595), EPA approved Connecticut's RFP plans for the Connecticut portion of the New York City area and the Greater Connecticut area. In that same notice, EPA also approved the contingency measures, the 2002 base year inventory, and the Motor Vehicle Emissions Budgets for 2008, associated with the reasonable further progress plans for both these areas.

IV. What is EPA's basis for approving the attainment demonstrations?

A. Adequacy of Control Strategy

Sections 172 and 182 of the Act require Connecticut to revise its SIP to meet various requirements applicable to nonattainment areas. Connecticut has submitted all required SIP revisions to address the control requirements under the 1997 8-hour ozone standard.

As noted earlier, EPA has already approved Connecticut's RFP plans for both nonattainment areas (77 FR 50595). Note that New Jersey and New York also have fully implemented RFP plans for the New York City area.[3] All three state's RFP plans contained corresponding emission control measures, and the three states also developed and adopted additional control measures to ensure attainment of the ozone standard by the attainment date. All of the control measures that are contained in the RFP plans were submitted as SIP revisions and approved by EPA. Therefore, Connecticut's demonstrations of attainment for the New York City and Greater Connecticut areas are approvable because Connecticut adopted the necessary ozone precursor control measures in its ozone plans.

As discussed above, EPA has already approved most of Connecticut's SIP revisions or analyses under these requirements. In this action, EPA is also proposing to approve Connecticut's RACM analyses. Furthermore, the final approval of Connecticut's December 8, 2006 RACT SIP was signed by the Regional Administrator on March 22, 2013 and forwarded for publication in the **Federal Register**. A copy of the signed approval is available in the docket for this action. Also, Connecticut submitted two additional control measures to EPA as SIP revisions from which reductions are assumed in Connecticut's attainment demonstrations. These measures are: VOC content limits for consumer products (Regulations of Connecticut State Agencies (RCSA) section 22a–174–40) and restrictions on the manufacture and use of adhesives and sealants (RCSA section 22a–174–44). EPA will take final action on these two regulations prior to finalizing action on today's proposal.

Finally, it should be noted that Connecticut's attainment demonstrations also include discussion of an anticipated measure, NO_x reductions from industrial, commercial

[2] See 73 FR 16436; March 27, 2008. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

[3] For further information on these plans, see 76 FR 51264 for New York and 74 FR 22837 for New Jersey.

and institutional (ICI) boilers that has not been adopted. However, on April 2, 2013, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a letter withdrawing this anticipated measure from its ozone attainment demonstrations submittal. CT DEEP noted in its withdrawal letter, that EPA has issued final determinations that both the Greater Connecticut and New York City areas have attained the 1997 8-hour ozone standard. Therefore, CT DEEP indicated that it now believes that the ICI boilers measure is not necessary for purposes of attainment of the 1997 8-hour ozone standard. We concur that the ICI boilers measure is not necessary for Connecticut's attainment demonstrations, for the following reasons. According to Connecticut's 2008 submission, in 2012, the ICI boiler regulation was projected to reduce NO_X emissions by 1.7 tons summer per day (TPSD) in the Connecticut portion of the New York City nonattainment area.[4] The total NO_X emissions projected for 2012 for the Connecticut portion of the New York City nonattainment area are 110.6 TPSD.[5] Moreover, the total projected NO_X emissions for 2012 for the entire three-state New York City nonattainment area exceeded 900 TPSD.[6] Comparing the projected reductions from the ICI boiler rule to the projected total NO_X emissions across all sectors, the potential NO_X reductions from Connecticut ICI boilers were only projected to equal 1.54% of the total Connecticut NO_X emissions for the area in 2012, and less than 0.2% of the total NO_X emissions for the entire nonattainment area. Since the ICI boiler rule would have resulted in a very small percent reduction in NO_X emissions, as compared to the total, the fact that Connecticut did not enact the rule does not call into question the adequacy of its SIP as a whole.

EPA's approval of these SIP revisions, in combination with this proposed approval of the attainment demonstrations and RACM analyses for the 1997 8-hour ozone standard, will serve to completely address Connecticut's requirements under the 1997 8-hour ozone standard for the Connecticut portion of the New York City area and for the Greater Connecticut area.

B. Components of the Modeled Attainment Demonstrations

Section 110(a)(2)(k) of the Act requires states to prepare air quality modeling to demonstrate how they will meet ambient air quality standards. The SIP must demonstrate that the "measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard." 40 CFR 51.112(a). EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as "moderate" or above, and to do so by the required attainment date. See 40 CFR 51.908(c). EPA requires an attainment demonstration, showing that attainment will occur by the attainment deadline, which for the New York City and Greater Connecticut areas was the end of the 2009 ozone season, using air quality modeling that meets EPA's guidelines. The model analysis can be supplemented by a "weight of evidence" analysis in which the State can use a variety of information to enhance the conclusions reached by the photochemical model analysis. In the case of the Connecticut areas, the weight of evidence also included additional emission reductions not included in the model inventory, such as the high electric demand day reductions, and energy efficiency reductions. EPA has determined that the photochemical grid modeling conducted by the state is consistent with EPA's guidelines and the model performed acceptably. See 40 CFR 51.908(c).

C. Air Quality Data

With respect to the Greater Connecticut area, EPA has evaluated the ambient air quality monitoring data and has determined that this area attained the 8-hour ozone standard by the required attainment date. On August 31, 2010 (75 FR 53219), EPA made a determination that the Greater Connecticut area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured and certified ambient air monitoring data that showed the Greater Connecticut area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period. Ambient air monitoring data for the 2008–2010 and 2009–2011 monitoring periods is also consistent with continued attainment. In addition, in this same rulemaking, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the Greater Connecticut area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2010.

With respect to the New York City area, EPA has evaluated the ambient air quality monitoring data and has determined that this area attained the 8-hour ozone standard by the required attainment date. On June 18, 2012 (77 FR 36163), EPA made a determination that the New York City area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured and certified ambient air monitoring data that showed the New York City area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Ambient air monitoring data for the 2009–2011 monitoring period is also consistent with continued attainment. In addition, in this same rulemaking, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the New York City area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2010. Copies of the August 21, 2010 and June 18, 2012 rulemakings are included in the Docket (EPA–R01–OAR–2008–0117) and available at *www.regulations.gov*. The reader is referred to these rulemakings for additional information regarding all of the complete, quality-assured and certified ozone monitoring data which served as the basis for these determinations.

EPA is aware that preliminary ambient air quality monitoring data for 2012 may indicate that the New York City area[7] has ozone air quality above the 1997 8-hour ozone NAAQS. However, 2012 monitoring data are not relevant to this particular action. This document proposes to approve Connecticut's demonstration of how it planned to attain the 1997 8-hour ozone

[4] The reductions were projected as 0.9 tons per day from area sources, and 0.8 tons per day from point sources. See Attachment F ("Revision to Connecticut's State Implementation Plan, 8-Hour Ozone Attainment Demonstration Technical Support Document, Appendices"), Appendix 4E (unnumbered last page labeled "Emission Reductions from ICI Boiler Control Strategy").

[5] *See* Attachment D ("Revision to Connecticut's State Implementation Plan, 8-Hour Ozone Attainment Demonstration Technical Support"), Table 4.4.2, at 4–32.

[6] For the New York portion of the New York City nonattainment area, the projected 2012 NO_X emissions are 544.9 TPSD. New Jersey did not project 2012 emissions, but projected total NO_X emissions for 2009 of 326.5 TPSD. Using the simplifying assumption that New Jersey's 2012 emissions would be at most equal to its 2009 emissions despite continued application of emissions controls, the projected total NO_X emissions for the New York City area can therefore be estimated as 982 TPSD (110.6 from Connecticut, 544.9 from New York, and 326.5 from New Jersey).

[7] Note this situation only applies to the New York City area. Preliminary ozone data for 2012 for the Greater Connecticut area indicates continued attainment of the 1997 8-hour ozone standard.

standard by the June 15, 2010 attainment date. As explained above, Connecticut's control strategy meets applicable EPA requirements, Connecticut's photochemical grid modeling demonstrated that it would attain the standard by the attainment date, and, based on monitored ozone data the New York City area attained the standard by the attainment date.

With respect to post-attainment date air quality data, EPA has a continuing obligation to review the air quality data each year, to determine whether areas are meeting the NAAQS, and EPA will continue to conduct such review in the future after the data are complete, quality-assured, certified and submitted to EPA.

D. EPA's Evaluation

In summary, the photochemical grid modeling used by Connecticut in its February 1, 2008 SIP submittal meets EPA's guidelines and is acceptable to EPA. Air quality data through 2011 supports the conclusion that the New York City and Greater Connecticut areas did demonstrate attainment of the 8-hour ozone standard by their attainment date. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. All necessary ozone control measures have already been adopted, submitted, approved [8] and implemented. Based on (1) The state following EPA's modeling guidance, (2) the air quality data through 2011, (3) the areas attaining the standard by the attainment date, and (4) the implemented SIP-approved control measures, EPA is proposing to approve the Connecticut ozone attainment demonstrations, including the RACM analyses for the Greater Connecticut area and for the Connecticut portion of the New York City area. For similar information about the New Jersey and New York portions of the New York City area, the reader is referred to EPA's approval of the New Jersey and New York ozone attainment demonstrations published on February 11, 2013 (78 FR 9596).

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

[8] As noted above, all necessary measures have been approved with the exception of RCSA sections 22a–174–40 and 22a–174–44. EPA will take final action on these two regulations prior to finalizing today's proposal.

V. Proposed Actions

EPA is proposing to approve the Connecticut ozone attainment demonstrations, including the RACM analyses, for both the Connecticut portion of the New York City moderate ozone nonattainment area and for the Greater Connecticut moderate ozone nonattainment area. EPA has evaluated Connecticut's submittal for consistency with the Act, EPA regulations, and EPA policy, and has considered all other information it deems relevant to attainment of the 1997 8-hour ozone standard, i.e., clean data determinations, determinations that the areas attained the standard by the applicable attainment date, statewide RACT, reasonable further progress plan approvals (including all applicable control strategy regulations), continued attainment of the 1997 8-hour ozone standard based on quality assured and certified monitoring data through 2011, and the implementation of the more stringent 2008 8-hour ozone standard.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 29, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–10929 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0746; FRL–9810–9]

Approval and Promulgation of Implementation Plans; Utah; Revisions to Utah Rule R307–107; General Requirements; Breakdowns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to Utah's rule R307–107, which pertains to source emissions during breakdowns. On April 18, 2011, EPA finalized a rulemaking which found that the Utah State Implementation Plan

(SIP) was substantially inadequate to attain or maintain the national ambient air quality standards (NAAQS) or to otherwise comply with the requirements of the Clean Air Act (CAA) because it included rule R307–107. Concurrent with this finding, EPA issued a SIP call that required the State to revise its SIP by either removing R307–107 or correcting its deficiencies, and to submit the revised SIP to EPA by November 18, 2012. On August 16, 2012, the State submitted to EPA revisions to R307–107. EPA is proposing that these revisions correct the rule's deficiencies and, therefore, satisfy EPA's April 18, 2011 SIP call. If EPA finalizes its proposed approval, all sanctions clocks and the clock for EPA to promulgate a federal implementation plan (FIP) will end.

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0746, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0746. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

For the purpose of this document, the following definitions apply:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

iii. The initials *FIP* mean or refer to federal implementation plan.

iv. The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

v. The initials *NESHAPS* mean or refer to National Emission Standards for Hazardous Air Pollutants.

vi. The initials *NSPS* mean or refer to New Source Performance Standards.

vii. The initials *SIP* mean or refer to state implementation plan.

viii. The initials *SSM* mean or refer to startup, shutdown, and malfunction.

ix. The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

x. The initials *UAQB* mean or refer to the Utah Air Quality Board.

xi. The initials *UDAQ* mean or refer to the Utah Division of Air Quality, Utah Department of Environmental Quality.

xii. The words *1999 Policy* mean or refer to the September 20, 1999 EPA Memorandum signed by Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, titled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown."

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

On April 18, 2011, EPA published a final rulemaking in the **Federal Register** (76 FR 21639) that found that the Utah SIP was substantially inadequate to attain or maintain the NAAQS or to otherwise comply with the requirements of the CAA because it included rule R307–107. In particular, we explained that R307–107: (1) Did not treat all exceedances of SIP and permit limits as violations; (2) could have been interpreted to grant the Utah executive secretary exclusive authority to decide whether excess emissions constituted a violation; and (3) improperly applied to Federal technology-based standards such as New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We concluded that R307–107 undermined EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on in the SIP to ensure attainment and maintenance of the NAAQS or meet other CAA requirements. 76 FR 21640.

Accordingly, we issued a SIP call which required the State to revise its SIP by either removing R307–107 or correcting its deficiencies, and to submit the revised SIP to us by November 18, 2012. Id. We also explained that if the State failed to submit a complete SIP revision by November 18, 2012, or if we disapproved a submitted SIP revision, clocks would be triggered for mandatory sanctions and for EPA to promulgate a FIP. Id. at 21640–41.

On June 17, 2011, U.S. Magnesium challenged our SIP call in the United States Court of Appeals for the 10th Circuit. On August 6, 2012, the 10th Circuit upheld EPA's SIP call.

On August 16, 2012, the State submitted to EPA revisions to R307–107 for the purpose of correcting the deficiencies described in the SIP call.

III. Revised Utah Rule R307–107 and EPA Analysis

A. The Revised Rule

The State substantially revised and simplified R307–107 in response to our SIP call. The rule now contains three sections—R307–107–1, "Applicability and Timing," R307–107–2, "Reporting," and R307–107–3, "Enforcement Discretion."

R307–107–1 requires the owner or operator of a source to report breakdowns to the director within 24 hours of the incident (R307–107–1(1)), to be followed by a detailed written description of the incident and corrective program within 14 days of the start of the incident (R307–107–1(2)). Alternative reporting deadlines apply where emissions are monitored by continuous monitoring systems under R307–170, but even where these alternative deadlines apply, the reports must still contain the information required by R307–107–1(2) and R307–107–2.

R307–107–2 requires breakdown incident reports to include the cause and nature of the event, estimated quantity of emissions, time of emissions, and other relevant evidence, including evidence that:

1. There was an equipment malfunction beyond the reasonable control of the owner or operator;

2. The excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component;

3. To the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions;

4. Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and as possible;

5. All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and

6. The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.

R307–107–2 also states that the owner or operator has the burden of proof to demonstrate the above elements.

R307–107–3 states that the director will evaluate, on a case-by-case basis, the information the owner or operator submits pursuant to R307–107–1 and 2 "to determine whether to pursue enforcement action."

The version of R307–107 that was the subject of our SIP call stated that "emissions resulting from unavoidable breakdown will not be deemed a violation of these regulations." This exemption, which was part of the reason for our SIP call, has been eliminated in the revised rule. The revised rule does not exempt exceedances of emissions limits caused by breakdowns.

The version of R307–107 that was the subject of our SIP call required the source to submit information regarding an unavoidable breakdown to the executive secretary of Utah's Air Quality Board and indicated that the information would be used by the executive secretary to determine "whether a violation has occurred . . ." This provision was another reason for our SIP call because it appeared to give the executive secretary exclusive authority to determine whether excess emissions constituted a violation and thus to preclude independent enforcement action by EPA and citizens when the executive secretary made a non-violation determination. This problematic language, indicating that the State would determine whether a violation had occurred, has been eliminated in the revised rule. Instead, as expressed in R307–107–3, the director will use the submitted information to determine whether to pursue an enforcement action. The director's decision not to pursue an enforcement action does not impact EPA's or citizens' ability to independently pursue an enforcement action in response to a given violation.

B. EPA's Analysis

EPA's interpretation is that the CAA requires that all periods of excess emissions, regardless of cause, be treated as violations and that automatic exemptions from emissions limits are not appropriate. This interpretation has been expressed in several documents. Most relevant to this action are the following: memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled, "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (the 1982 Memorandum); a clarification to that memorandum from Kathleen M. Bennett issued on February 15, 1983 (the 1983 Memorandum); and a memorandum dated September 20, 1999 entitled, "State Implementation Plans: Policy Regarding Excess Emissions During

Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation (the 1999 Memorandum).

As explained in these memoranda, because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS and compliance with other CAA requirements, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, EPA will disapprove SIP revisions that automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, as made explicit in the 1999 Memorandum, EPA will disapprove SIP revisions that give discretion to a state director to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

Under EPA's interpretations of the CAA as set forth in the 1982, 1983, and 1999 Memoranda, if a state chooses to address in its SIP violations that occur as a result of claimed malfunctions, the state may take two approaches. The first, the "enforcement discretion" approach, allows a state director to refrain from taking an enforcement action for a violation if certain criteria are met. The second, the "affirmative defense" approach, allows a source to avoid civil penalties if it can prove that certain conditions are met. Utah's revised R307–107 follows the enforcement discretion approach.

We have evaluated Utah's enforcement discretion provisions in revised R307–107 and find that they are consistent with EPA's interpretations of the CAA as described in the memoranda above. In particular, the revised rule contains no automatic exemption from emission limits, and the criteria specified in R307–107–2 that the State will consider in deciding whether to pursue an enforcement action generally parallel the criteria outlined in the 1982 and 1983 Memoranda. In addition, revised R307–107 only addresses the State's exercise of its enforcement discretion and contains no language that suggests that a State decision not to pursue an enforcement action for a particular violation bars EPA or citizens from taking an enforcement action. Therefore, EPA interprets the rule, consistent with EPA's interpretations of the CAA, as not barring EPA and citizen enforcement of violations of applicable requirements when the State declines enforcement.

IV. EPA's Proposed Action

We are proposing to approve the revisions to rule R307–107 of the Utah SIP that the State submitted to us on August 16, 2012. We are proposing that these revisions correct the deficiencies outlined in our April 18, 2011 SIP call. If we finalize this proposed approval, the mandatory sanctions clocks described in our SIP call and the clock for EPA to promulgate a FIP will end.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 23, 2013.

Judith Wong,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2013–10934 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket EPA–R10–OAR–2009–0340; FRL–9794–1]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Mendenhall Valley PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Limited Maintenance Plan (LMP) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) submitted by the State of Alaska on May 8, 2009 for the Mendenhall Valley nonattainment area (Mendenhall Valley NAA), and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–

OAR–2009–0340, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov*
- *Mail:* Mr. Keith Rose, U.S. EPA Region 10, Office of Air, Waste and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Keith Rose at telephone number: (206) 553–1949, email address: *rose.keith@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register.** The EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 12, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–10938 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Chapter I

[Docket No. PHMSA–2013–0027; Notice No. 13–5]

Regulatory Flexibility Act Review

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: PHMSA seeks comments on the economic impacts of its Hazardous Materials Regulations on small entities. In accordance with section 610 of the Regulatory Flexibility Act and as published in the Unified Agenda and Regulatory Plan, PHMSA is reviewing and analyzing the regulations applicable to the Hazardous Materials Program Procedures to identify requirements which may have a significant impact on a substantial number of small entities. The Unified Agenda and Regulatory plan for the Department of Transportation can be found at the following URL: *http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2013-00597.pdf.*

DATES: Comments must be received by July 8, 2013.

FOR FURTHER INFORMATION CONTACT: Ben Supko, Office of Hazardous Materials Safety, Standards and Rulemaking Division (202) 366–8553, 1200 New Jersey Avenue SE., Washington, DC 20590. For more information on the Hazardous Materials Regulations contact the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC call 202–366–4488).

SUPPLEMENTARY INFORMATION: The complete analysis of the rules in the 2012–2013 Review Year, the Unified Agenda and Regulatory Plan, and comment submission can be found at: *http://www.regulations.gov/* (Docket No. PHMSA–2013–0027).

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act requires periodic reviews of existing regulations with significant economic impact (5 U.S.C. 610(c)). The purpose of the 610 reviews is to assess the following: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

B. Review Schedule

The Department of Transportation (DOT) published its Unified Agenda and Regulatory Plan on December 21, 2012 listing in Appendix D—Review Plans for Section 610 and Other Requirements (78 FR 3299) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all its existing regulations.

PHMSA has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 100–185) into 10 groups by subject area. Each group will be reviewed once every 10 years. Each group of regulations is reviewed in a two-stage process: (1) Analysis Year; and (2) Section 610 Review Year. In the Analysis Year, PHMSA conducts a review of the group regulations to determine whether any rule has a significant impact on a substantial number of small entities; and thus requires review in accordance with section 610 of the Regulatory Flexibility Act. In each Regulatory Agenda, PHMSA publishes the results of the analyses completed for the previous year. For those rules that may have negative findings, a brief rationale is provided. For parts, subparts or sections of the HMR that do have a significant impact on a substantial number of small entities, PHMSA will announce that it will be conducting a formal section 610 review during the following year. For the purposes of this review, the 2012–2013 610 review year began in the Fall of 2012 and PHMSA's analysis will conclude in the Fall of 2013. The following table shows the 10-year analysis and review schedule:

PHMSA SECTION 610 REVIEW PLAN 2008–2018

Title	Year	Regulations to be reviewed	Analysis year	Review year
Specifications for Non-bulk Packagings	1	part 178	2008	2009
Specifications for Bulk Packagings	2	parts 178 through 180	2009	2010
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans; and Carriage by aircraft.	3	parts 172 and 175	2010	2011
Incident Reporting	4	sections 171.15 and 171.16	2011	2012
Hazardous Materials Program Procedures; General Information, Regulations and Definitions; Pipeline Safety Programs and Rulemaking Procedures; and Transportation of Hazardous Liquids by Pipeline.	5	parts 106, 107, 171, 190, and 195	2012	2013
Carriage by Rail; Carriage by Highway; Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Conditions Reports.	6	parts 174, 177, 191, and 192	2013	2014
Carriage by Vessel; and Drug and Alcohol Testing	7	parts 176 and 199	2014	2015
	8	parts 172 through 178	2015	2016
	9	parts 172, 173, 174, 176, 177, and 193	2016	2017
	10	parts 173 and 194	2017	2018

C. 2012–2013 610 Review Year: Sections Under Review

During Year 5 (2012–2013), PHMSA has initiated and will continue to conduct a formal section 610 review of some of 49 CFR parts 106, 107, 171. The full analysis document for the hazardous materials rules covered by Year 5 is available in the public docket for this notice (Go to *www.regulations.gov*—Search for Docket No. PHMSA–2013–0027). The section 610 analysis that began in the fall of 2012 included 49 CFR parts 106, 107, 171. Specific areas outlined in the full analysis for further review include:

PART 107

Subpart	Title
Subpart D	Enforcement.
Subpart D of part 107 contains the regulations pertaining to the enforcement authorities of the Associate Administrator for Hazardous Materials Safety and the Office of Chief Counsel. It outlines the minimum, maximum, and recommended baseline penalties for violating the HMR and the procedures for enforcing and imposing those sanctions. While no additional costs or impacts are imposed on small entities who comply with the HMR, PHMSA seeks comment on these regulations due to the potential for explicit monetary expenses (e.g. civil penalties and ticketing).	
Subpart F	Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers.
Subpart F of part 107 contains the registration procedures for manufacturers, assemblers, repairers, inspectors, testers and design certifying engineers of cargo tanks manufactured in accordance with a DOT specification or DOT special permit. In the last regulatory evaluation conducted in 2003, it was determined that approximately 9,200 motor carriers and 7,000 cargo tank inspection/testing facilities are small entities affected by the costs associated with these procedures. PHMSA is seeking comment on whether these regulations have a significant impact on small entities.	
Subpart I	Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders.

PART 107—Continued

Subpart	Title
Subpart I of part 107 prescribes the approval process for persons who seek to be an independent inspection agency to perform tests, inspections, verifications and certifications of DOT specification cylinders or UN pressure receptacles. Additionally, this subpart addresses the approval process for a person who engages in the requalification (e.g. inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard, or under the terms of a DOT special permit. This approval is commonly known as a requalifier identification number (RIN). Lastly, subpart I of part 107 addresses the approval procedures for persons who perform the manufacturing chemical analyses and tests of DOT specification cylinders, special permit cylinders, or UN pressure receptacles outside the United States. In the regulatory analysis of previous rulemakings affecting subpart I of part 107, it was determined that the vast majority of entities subject to those rulemakings were small entities. Thus, due to the number of small entities this subpart is estimated to affect, PHMSA is seeking comment on whether these regulations have a significant impact.	

As discussed in the Background and Purpose section above, Section 610 of the Regulatory Flexibility Act requires periodic reviews of existing regulations with significant economic impact (5 U.S.C. 610(c)). In conducting this review, PHMSA is seeking specific comments on whether the Hazardous Materials Program Procedures in 49 CFR part 107, Subparts D, F and I have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

If your business or organization is a small entity, or you represent a business or organization that is a small entity and the rules in 49 CFR part 107, Subparts D, F, and I or 49 CFR parts 106, 107, 171have a significant economic impact on your business or organization, please submit a comment at: *http://www.regulations.gov/* (Docket No. PHMSA–2013–0027) explaining the following:

1. How and to what degree these rules affect you;

2. Any complaints or comments you may have concerning the covered rules;

3. The complexity of the covered rules;

4. The extent to which the rules overlap, duplicate or conflict with other Federal rules, and to the extent feasible, with State and local government rules; and

5. The extent of the economic impact on you and why you believe the economic impact is significant.

Issued in Washington, DC, on April 30, 2013 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–10897 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0031; FWS–R4–ES–2013–0007; 4500030113]

RIN 1018–AX73; 1018–AZ30

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Neosho Mucket, Threatened Status for the Rabbitsfoot, and Designation of Critical Habitat for Both Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our October 16, 2012, proposed listing and designation of critical habitat for the Neosho mucket (*Lampsilis rafinesqueana*) and rabbitsfoot (*Quadrula cylindrica cylindrica*) mussels under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and draft environmental assessment of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA and draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: We will consider all comments received or postmarked on or before June 10, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain a copy of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0031 or by mail from the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the draft economic analysis and the draft environmental assessment at Docket No. FWS–R4–ES–2013–0007.

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Submit comments on the listing proposal to Docket No. FWS–R4–ES–2012–0031, and submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment to Docket No. FWS–R4–ES–2013–0007. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments

Processing, Attn: FWS–R4–ES–2012–0031; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal, draft economic analysis, and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0007; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Boggs, Field Supervisor, U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032; by telephone 501–513–4475; or by facsimile 501–513–4480. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing determination and proposed critical habitat designation for the Neosho mucket (*Lampsilis rafinesqueana*) and rabbitsfoot (*Quadrula cylindrica cylindrica*) mussels that was published in the **Federal Register** on October 16, 2012 (77 FR 63440), our draft economic analysis (DEA) and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the Neosho mucket and rabbitsfoot mussels. The final listing rule will publish under the existing Docket No. FWS–R4–ES–2012–0031 and the final critical habitat designation will publish under Docket No. FWS–R4–ES–2013–0007.

We request that you provide comments specifically on our listing determination under Docket No. FWS–R4–ES–2012–0031.

We request that you provide comments specifically on the critical habitat determination and related draft economic analysis and draft environmental assessment under Docket No. FWS–R4–ES–2013–0007. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of each species' habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of these species we should include in the designation and why; and

(c) What areas not occupied at the time of listing are essential to the conservation of these species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) The projected and reasonably likely impacts of climate change on the critical habitat we are proposing.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA and draft environmental assessment, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (77 FR 63440) during the initial comment period from October 16, 2012, to December 17, 2012, please do not resubmit them. We have incorporated them into the public record as part of the comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule, DEA, or draft environmental assessment by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, draft economic analysis, and draft environmental assessment will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0031 and Docket No. FWS–R4–ES–2013–0007, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule, the DEA, and the draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0031 and Docket No. FWS–R4–ES–2013–0007, or by mail from the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the Neosho mucket and rabbitsfoot in this document. For more information on the two mussels, their fish hosts, or their habitats, or more information than we provide below concerning previous

Federal actions for these mussels, refer to the proposed listing determination and proposed designation of critical habitat published in the **Federal Register** on October 16, 2012 (77 FR 63440), which is available online at *http://www.regulations.gov* (at Docket No. FWS–R4–ES–2012–0031 or Docket No. FWS–R4–ES–2013–0007) or from the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 16, 2012, we published a proposed rule to list the Neosho mucket (*Lampsilis rafinesqueana*) as an endangered species and the rabbitsfoot (*Quadrula cylindrica cylindrica*) mussel as a threatened species under the Act and to designate critical habitat for these two mussels (77 FR 63440). We proposed to designate approximately 779.1 river kilometers (rkm) (484.1 river miles (rmi)) of critical habitat for the Neosho mucket in the Cottonwood, Elk, Fall, Illinois, Neosho, Shoal, Spring, North Fork Spring, and Verdigris Rivers in Arkansas, Kansas, Missouri, and Oklahoma. The proposed critical habitat for the Neosho mucket is located in:

- Benton and Washington Counties, Arkansas;
- Allen, Chase, Cherokee, Coffey, Elk, Greenwood, Labette, Montgomery, Neosho, Wilson, and Woodson Counties, Kansas;
- Jasper, Lawrence, McDonald, and Newton Counties, Missouri; and
- Adair, Cherokee, and Delaware Counties, Oklahoma.

We proposed to designate 2,664 rkm (1,655 rmi) (as amended in this document; see Changes from the Proposed Rule, below) of critical habitat for the rabbitsfoot in the Neosho, Spring (Arkansas River system), Verdigris, Black, Buffalo, Little, Ouachita, Saline, Middle Fork Little Red, Spring (White River system), South Fork Spring, Strawberry, White, St. Francis, Big Sunflower, Big Black, Paint Rock, Duck, Tennessee, Red, Ohio, Allegheny, Green, Tippecanoe, Walhonding, Middle Branch North Fork Vermilion, and North Fork Vermilion Rivers and Bear, French, Muddy, Little Darby and Fish Creeks in Alabama, Arkansas, Kansas, Kentucky, Illinois, Indiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, and Tennessee. The proposed critical habitat for the rabbitsfoot is located in:

- Colbert, Jackson, Madison, and Marshall Counties, Alabama;
- Arkansas, Ashley, Bradley, Clark, Cleveland, Dallas, Drew, Fulton, Grant, Hot Spring, Independence, Izard, Jackson, Lawrence, Little River, Marion, Monroe, Montgomery, Newton, Ouachita, Randolph, Saline, Searcy, Sevier, Sharp, Van Buren, White, and Woodruff Counties, Arkansas;
- Allen and Cherokee Counties, Kansas;
- Ballard, Green, Hart, Livingston, Logan, Marshall, and McCracken Counties, Kentucky;
- Massac, Pulaski, and Vermilion Counties, Illinois;
- Carroll, Pulaski, Tippecanoe, and White Counties, Indiana;
- Hinds, Sunflower, Toshimingo, and Warren Counties, Mississippi;
- Jasper, Madison, and Wayne Counties, Missouri;
- Coshocton, Madison, Union, and Williams Counties, Ohio;
- McCurtain and Rogers Counties, Oklahoma;
- Crawford, Erie, Mercer, and Venango Counties, Pennsylvania; and
- Hardin, Hickman, Marshall, Maury, and Robertson Counties, Tennessee.

That proposal had a 60-day comment period, ending December 17, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Changes From the Proposed Rule

We are changing the proposed rule of October 16, 2012 (77 FR 63440) to revise the total number of river kilometers (km) for the proposed designation of rabbitsfoot critical habitat. However, the beginning and ending points of the proposed critical habitat designation, as well as the unit descriptions (as described in the proposed critical habitat rule), remain the same.

The change in mapping was necessary due to an oversight in methods used for estimating the unit length in proposed critical habitat Unit RF7. The new methodology uses a better technique for following the curve and meander of the river channel, which results in an additional 1.4 river kilometers (rkm) (0.9 river mile (rmi)) of proposed critical habitat. An additional change in mapping, for Unit RF5, resulted from a mapping error. A short segment in the middle of Unit RF5 was not included; the addition of this segment added 0.8 rkm (0.5 rmi) to Unit RF5 and resulted in a corresponding increase to the private ownership river miles adjacent to Units RF5 and RF7.

The following table shows the revised number of river kilometers (rkm) and river miles (rmi) and ownership of adjacent riparian lands for the proposed designation of critical habitat for rabbitsfoot in Units RF5 and RF7. The data in this table replace the data provided in Table 5 of the proposed rule at 77 FR 63440 (October 16, 2012).

Critical habitat units	Federal rkm; rmi	State & local government rkm; rmi	Private rkm; rmi	Tribal* (subset of private) rkm; rmi
Rabbitsfoot				
Unit RF5: Saline River	0	22.3; 13.9	266.8; 165.8	0
Unit RF7: Middle Fork Little Red River	0	0	24.7; 15.4	0
Total rabbitsfoot	328.1; 203.9	137.9; 85.7	2,197.5; 1,365.3	86.9; 54.0
Total for both species	357.6; 222.2	147.7; 91.8	2,937.3; 1,825.3	189.9; 118.0

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that an area would receive from consultation regarding adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing features that are essential to the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of these two mussels, the benefits of critical habitat include public awareness of the presence of the mussels and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the two mussels due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, funded, or permitted by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific and commercial data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of the designation. Accordingly, our DEA concerning the proposed critical habitat designation is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Neosho mucket and rabbitsfoot. The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the two mussels (e.g., under the Federal listing and other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for these species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation.

Most courts have held that the Service only needs to consider the incremental impacts imposed by the critical habitat designation over and above those impacts imposed as a result of listing the species. For example, the Ninth Circuit Court of Appeals reached this conclusion twice within the last few years, and the U.S. Supreme Court declined to hear any further appeal from those rulings. (See *Arizona Cattle Growers' Assoc.* v. *Salazar*, 606 F.3d 116, (9th Cir. June 4, 2010) cert. denied, 179 L. Ed. 2d 300, 201 t U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011); *Home Builders Association of Northern California* v. *United States Fish & Wildlife Service*, 616 F. 3rd 983 (9th Cir. 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011).)

However, the prevailing court decisions in the Tenth Circuit Court of Appeals do not allow the incremental analysis approach. Instead, the Tenth Circuit requires that the Service consider both the baseline economic impacts imposed due to listing the species and the additional incremental economic impacts imposed by designating critical habitat. (See *New Mexico Cattle Growers Ass'n* v. *FWS*, 248 F.3d 1277 (10th Cir. May 11, 2001).) As a consequence, an economic analysis for critical habitat that is being proposed for designation within States that fall within the jurisdiction of the Tenth Circuit (as this designation does) should include a coextensive cost evaluation, which addresses, and quantifies to the extent feasible, all of the conservation-related impacts associated with the regulatory baseline (those resulting under the jeopardy standard under section 7 of the Act, and under sections 9 and 10 of the Act). In other words, the allocation of impacts should show those that are part of the regulatory baseline and those that are unique to the critical habitat designation.

Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, "FRAMEWORK FOR THE ANALYSIS" of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the two mussels over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for the two mussels associated with the following categories of activity: (1) Water management; (2) timber management, agriculture, and grazing; (3) mining; (4) oil and gas development; (5) transportation (roads, highways, bridges) and utilities; (6) development; and (7) recreation.

The DEA concluded that the types of conservation efforts requested by the Service during section 7 consultation regarding the two mussels were not expected to change due to critical habitat designation. The Service believes that results of consultation under the adverse modification and jeopardy standards are likely to be similar because the ability of these species to exist is very closely tied to the quality of their habitats, and significant alterations of their occupied habitat that could result in adverse modification would also result in jeopardy to the species.

The DEA concludes that incremental impacts of critical habitat designation are limited to additional administrative costs of consultations and that indirect incremental impacts are unlikely to result from the designation of critical habitat for the two mussels. The present value of the total direct (administrative) incremental cost of critical habitat designation is $4,400,000 over the next 20 years assuming a 7 percent discount rate, or $290,000 on an annualized basis. Transportation and utility

activities are likely to be subject to the greatest incremental impacts at $1,400,000 over the next 20 years, followed by timber, agriculture, and grazing at $960,000; development at $760,000; other (animal and biological control, prescribed burns, land clearing, bank stabilization, habitat or shoreline restoration) at $530,000; oil and gas development at $320,000; water flow management at $190,000; water quality management at $120,000; and mining at $71,000.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Draft Environmental Assessment

The purpose of an environmental assessment is to identify and disclose the environmental consequences associated with the proposed critical habitat designation for the Neosho mucket and rabbitsfoot in compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We evaluated a variety of issues related to the human environment that could potentially be affected by the designation of critical habitat for the two mussels, including conservation of the Neosho mucket and rabbitsfoot, water resources, energy development and production, socioeconomic conditions and environmental justice, and cumulative effects. Our draft environmental assessment concerning the proposed critical habitat designation is available for review and comment (see **ADDRESSES**).

Required Determinations—Amended

In our October 12, 2011, proposed rule (76 FR 63360), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the two mussels would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as water management, timber management, agriculture and grazing, mining, oil and gas development, transportation and utilities, and development and recreation. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for these species, in the areas where they are present Federal agencies will already be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the two mussels. We anticipate that 11 small entities could be affected by water flow management consultations in a single year at a cost of $410 each, representing less than 0.007 percent of annual revenues. Eleven small entities could be affected by water quality management consultations within a single year at a cost of $340 each, representing less than 1 percent of annual revenues. Forty-one small

entities could be affected by timber, agriculture, and grazing consultations within a single year, at a cost of $470, representing less than 0.028 percent of annual revenues. Four small entities could be affected by mining consultations within a single year, at a cost of $430, representing less than 0.005 percent of annual revenues. Fourteen small entities could be affected by oil and gas development consultations within a single year, at a cost of $460, representing less than 0.006 percent of annual revenues. Forty-three small entities could be affected by development and recreation consultations within a single year, at a cost of $410, representing less than 0.007 percent of annual revenues. Sixty-eight small entities could be affected by transportation and utility consultations within a single year, at a cost of $450, representing 0.005 percent of annual revenues. Thirty-five small entities could be affected by other consultations within a single year, at a cost of $400, representing 0.005 percent of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified 227 small entities that may be impacted by the proposed critical habitat designation in a single year. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, as is the case with the Neosho mucket and rabbitsfoot, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. Accordingly, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Neosho mucket and rabbitsfoot. Our preliminary determination is that the designation of critical habitat for the Neosho mucket and rabbitsfoot would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Neosho mucket and rabbitsfoot in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for the Neosho mucket and rabbitsfoot. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Neosho mucket and rabbitsfoot does not pose significant takings implications for lands within or affected by the designation.

Government-to-Government Relationship With Tribes

Potentially affected Tribes include: the Osage Nation, Cherokee Nation, United Keetowah Band of Cherokee Indians, Choctaw Nation, Delaware Tribe of Indians, and Peoria Tribe. On April 19, 2011, we notified the United Keetowah Band of Cherokee Indians and Delaware Tribe of Indians via email regarding tribal lands potentially affected by our proposal to list Neosho mucket and rabbitsfoot and to designate critical habitat for each species. The Peoria Tribe and Osage Nation also were notified via email on February 15, 2011, and we then followed up with subsequent email correspondence. The Cherokee Nation and Choctaw Nation were notified via email on April 20 and 21, 2011, respectively, via email and telephone. Lands proposed to be designated as critical habitat do not represent riparian land ownership by any Tribe, represent only tribal

jurisdictional areas, are not managed by any Tribe, and are on otherwise privately owned lands. We considered the Tribes' comments, which were limited to providing tribal land and jurisdictional area maps and biological data for the two mussels, during preparation of the proposed rule.

Authors

The primary authors of this notice are the staff members of the Arkansas Ecological Services Field Office and the Southeast Region, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 1, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–10990 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 90
Thursday, May 9, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of May 17 President's Global Development Council Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the President's Global Development Council (GDC).

Date: Friday, May 17, 2013.

Time: TBD.

Location: Eisenhower Executive Office Building, South Court Auditorium, Pennsylvania Avenue and 17th Street NW.

Because of the exceptional circumstances of coordinating high-level schedules and other logistics this notice is being provided less than 15 days prior pursuant to 5 CFR 102–3.150(b).

Agenda

I. Opening Remarks: Vision for the GDC
II. Overview of the GDC's Role & Efforts
III. Presentations on Key Issues
IV. Request for Feedback and Q&A

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should RSVP to *Interest_GDC@who.eop.gov*. Please note that capacity is limited. Additional information on web streaming will be forthcoming on *www.whitehouse.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202–712–5506.

Dated: May 3, 2013.

Jayne Thomisee,

Executive Director & Policy Advisor, U.S. Agency for International Development.

[FR Doc. 2013–11025 Filed 5–8–13; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 3, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Form 444, "Wholesale Power Contracts".

OMB Control Number: 0572–0089.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act) as amended (7 U.S.C. 901 et seq.), authorizes the Rural Utilities Service (RUS) to make and guarantee loans that will enable rural consumers to obtain electric power. Rural consumers formed non-profit electric distribution cooperatives, groups of these distribution cooperatives banded together to form Generation and Transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems. All RUS and G&T borrowers will enter into a Wholesale Power Contract with their distribution members by using RUS Form 444, as adapted to meet the needs of the borrower.

Need and Use of the Information: To fulfill the purposes of the RE Act RUS will collect information to improve the credit quality and credit worthiness of loans and loan guarantees to G&T borrowers. RUS works closely with lending institutions that provide supplemental loan funds to borrowers.

Description of Respondents: Not-for profit institutions; Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: At time of request for a loan or loan guarantee.

Total Burden Hours: 120.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–10960 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–13–0002]

Notice of Funds Availability (NOFA) Inviting Applications for the Specialty Crop Block Grant Program-Farm Bill (SCBGP–FB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $52 million in grant funds, less USDA

administrative costs, for fiscal year (FY) 2013, to solely enhance the competitiveness of specialty crops. SCBGP–FB funds are authorized by Section 701 of the American Taxpayer Relief Act of 2012 that extends Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (the Farm Bill) for one year until September 30, 2013. State departments of agriculture are encouraged to develop their grant applications promptly. State departments of agriculture interested in obtaining grant program funds are invited to submit applications to USDA. State departments of agriculture, meaning agencies, commissions, or departments of a State government responsible for agriculture within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are eligible to apply.

DATES: Applications must be received between May 9, 2013 and not later than July 10, 2013.

FOR FURTHER INFORMATION CONTACT: Trista Etzig, Phone: (202) 690–4942, email: *trista.etzig@ams.usda.gov* or your State department of agriculture listed on the SCBGP and SCBGP–FB Web site at *www.ams.usda.gov/scbgp*.

SUPPLEMENTARY INFORMATION: SCBGP–FB is authorized under Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and amended under Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (the Farm Bill). SCBGP–FB is currently implemented under 7 CFR part 1291 (published March 27, 2009; 74 FR 13313).

The SCBGP–FB assists State departments of agriculture in solely enhancing the competitiveness of U.S. specialty crops. Specialty crops are defined as fruits and vegetables, dried fruit, tree nuts, horticulture, nursery crops (including floriculture).

AMS encourages states to develop projects solely to enhance the competitiveness of specialty crops pertaining to the following issues affecting the specialty crop industry: increasing child and adult nutrition knowledge and consumption of specialty crops; improving efficiency and reducing costs of distribution systems; assisting all entities in the specialty crop distribution chain in developing "Good Agricultural Practices", "Good Handling Practices", "Good Manufacturing Practices", and in cost-share arrangements for funding audits of such systems for small farmers, packers and processors; investing in specialty crop research, including research to focus on conservation and environmental outcomes; enhancing food safety; developing new and improved seed varieties and specialty crops; pest and disease control; and development of organic and sustainable production practices.

States should consider submitting grants that increase the competitiveness of specialty crop farmers, including Native American and disadvantaged farmers. Increasing competitiveness may include developing local and regional food systems, and improving food access in underserved communities.

Projects that support biobased products and bioenergy and energy programs, including biofuels and other alternative uses for agricultural and forestry commodities (development of biobased products) should see the USDA energy Web site at: *http://www.usda.gov/energy/matrix/Home* for information on how to submit those projects for consideration to the energy programs supported by USDA.

Projects that support farmers markets or other venues where non-specialty crops are sold should include controls to ensure that grant funds will only be used to benefit specialty crops. For examples of strategies to meet this requirement, please see page 26 of the document at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5080825*.

Each interested State department of agriculture must submit an application for SCBGP–FB grant funds anytime between May 9, 2013 and on or before July 10, 2013, through *www.grants.gov*. AMS will work with each State department of agriculture and provide assistance as necessary.

Other organizations interested in participating in this program should contact their local State department of agriculture. State departments of agriculture specifically named under the authorizing legislation should assume the lead role in SCBGP–FB projects, and use cooperative or contractual linkages with other agencies, universities, institutions, and producer, industry, tribe, or community-based organizations as appropriate.

Additional details about the SCBGP–FB application process for all applicants are available at the SCBGP–FB Web site: *http://www.ams.usda.gov/scbgp*.

To be eligible for a grant, each State department of agriculture's application shall be clear and succinct and include the following documentation satisfactory to AMS:

(A) One SF–424 "Application for Federal Assistance". The grant period must start on or before September 30, 2013 and end no later than September 29, 2016.

(B) SF–424A "Budget Information—Non-Construction Programs" showing the budget for each project.

(C) One SF–424B "Assurances—Non-Construction Program"

(D) Completed applications must also include one State plan to show how grant funds will be utilized to solely enhance the competitiveness of specialty crops. The State plan shall include the following:

(1) Cover page and granting processes. Include the point of contact and lead agency for administering the plan. Include the steps taken to conduct outreach to specialty crop stakeholders to receive and consider public comment to identify state funding priorities needs, including any focus on multi-state projects in enhancing the competitiveness of specialty crops. Provide the identified funding priority areas. Describe the methods used to identify socially disadvantaged and beginning farmers and reach out to these groups about the SCBGP–FB. Identify by project title if an award was made to either a socially disadvantaged farmer or a beginning farmer. If steps were not taken to conduct outreach to socially disadvantaged and beginning farmers, provide a justification for why not. Provide a description of the affirmative steps taken to conduct a competitive grant process. Describe the methods used to solicit proposals that met identified specialty crop funding priority needs. Include the number of grant proposals that were received. Describe how members on the review panel were selected to ensure they were free from conflicts of interest and consisted of a community of experts in various fields, who were qualified and able to perform impartial reviews. Identify what fields the review panel members were from. State if the review results of the peer review panel were given to the grant applicants ensuring the confidentiality of the review panel members. If a competitive grant process was not used, provide a justification why not.

(2) State Department of Agriculture Oversight. Describe how and when the State department of agriculture will oversee subgrantee activities to ensure proper and efficient administration of grant funds. Include timelines for oversight activities. If grant funds will be used for direct administration of the grant agreement, include a budget breakdown to include percent of full-time equivalents (FTE), percent of fringe benefits, supplies, etc. Also, include the administrative "project" on the SF–

424A "Budget Information—Non-Construction Programs" including indirect costs.

(3) Project title, partner organization name, abstract. Include the title of the project, the name of the organization that will partner with the State department of agriculture to lead and execute the project, and an abstract of 200 or fewer words for each project.

(4) Project purpose. For each project, clearly state the purpose of the project. Describe the specific issue, problem, interest, or need to be addressed. Explain why the project is important and timely and identify the objectives of the project. If the project has the potential to enhance the competiveness of non-specialty crops, describe the methods or processes the applicant will use to ensure all grant funds will solely enhance the competitiveness of eligible specialty crops as defined in 7 CFR 1291.2(n). If a project builds on a previous SCBGP or SCBGP–FB project, indicate how the projects differ from one another. For each project, indicate if the project will be or has been submitted to or funded by another Federal or State grant program. If the project was submitted to or funded by another Federal or State grant program, describe how the project differs from and supplements efforts of the SCBGP–FB and the other Federal or State grant program and does not duplicate funding efforts. The SCBGP–FB will not fund duplicative projects.

(5) Potential impact. This section shall show how the project potentially impacts the specialty crop industry and/or the public rather than a single organization, institution, or individual. Identify who the specialty crop beneficiaries of the project are, the number of specialty crop beneficiaries impacted, how the specialty crop beneficiaries are impacted by the project, and/or the potential economic impact if such data are available and relevant to the project.

(6) Expected Measurable Outcomes. For each project, describe at least one distinct, quantifiable, and measurable outcome-oriented objective that directly and meaningfully supports the project's purpose. The measurable outcome-oriented objective must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public. The measurable outcomes, when possible, should include a goal, performance measure, benchmark, and target. Outcome measures may be long term and may exceed the grant period. For each project, describe how performance toward meeting outcomes will be monitored by identifying the data sources that will be used to monitor performance and how the data will be collected.

(7) Work Plan. For each project, explain briefly the activities that will be performed to accomplish the objectives of the project. Be clear about who will do the work and when each activity will be accomplished to include beginning and end dates for each project. Include the performance monitoring/data collection plan.

(8) Budget Narrative. Provide in sufficient detail information about the budget categories listed on SF–424A for each project to demonstrate that grant funds are being expended on eligible grant activities that meet the purpose of the program and that costs are reasonable and allowable.

(a) Personnel—For each project participant, indicate their title, percent FTE, and corresponding salary for the FTE. Show the total for all SCBGP–FB funded personnel.

(b) Fringe benefits—Provide the rate of fringe benefits for each project participant's salary described in the personnel section. Show the total for all SCBGP–FB funded fringe benefits.

(c) Travel—Provide the following information in the narrative if applicable: destination; purpose of trip; number of trips; number of people traveling; number of days traveling; estimated airfare costs; estimated ground transportation costs; estimated lodging and meals costs; and estimated mileage rate and costs for the travel. Show the total for all SCBGP–FB funded travel.

(d) Equipment—Provide an itemized list of equipment purchases or rentals, along with a brief narrative on the intended use of each equipment item, and the cost for all the equipment purchases or rentals. Show the total for all SCBGP–FB funded equipment.

(e) Supplies—Provide an itemized list and estimate the dollar amount for each item. Show the total for all SCBGP–FB funded supplies.

(f) Contractual—Provide a short description of the services each contract covers. Indicate if the cost is a flat rate fee or hourly rate. Indicate the flat rate fee or hourly rate to be applied. If hourly rates exceed the salary of a GS–14 step 10 Federal employee in your area (for more information please go to *www.opm.gov* and click on Salaries and Wages), an acceptable justification must be provided. List general categories of items the contract covers such as professional services, travel, lodging, indirect costs, etc. Show the total for all SCBGP–FB funded contractual.

(g) Other—Provide a detailed description of all other direct costs such as mailings, postage, express mail, faxes, and telephone long distance charges; speaker/trainer fees to include the amount of the speaker's fees and a description of the services they are providing; publication costs to include the estimated cost of printing of brochures and other program materials or scientific or technical journals as well as an estimate of the number of pieces to be printed/published; data collection to include the estimated costs of collecting performance data to measure the project outcome measures; and the costs of holding a conference or meeting. If meals are budgeted for a conference or meeting for reasons other than meals associated with travel per diem, provide an adequate justification for why these costs should not be considered entertainment costs. Show the total for all SCBGP–FB funded other.

(h) Indirect Costs—Indicate percent of indirect costs. Show the total for all SCBGP–FB funded indirect charges. Indirect costs for this grant period should not exceed 10 percent of any proposed budget.

(i) Program Income—Indicate the nature or source of program income (*i.e.*, registration fees). Estimate the amount of program income. Describe how the income will be used to further enhance the competitiveness of specialty crops.

(9) Project Partner Oversight. Describe who or what organization will oversee the project activities and how will oversight be performed to ensure proper and efficient administration for each project.

(10) Project Commitment. Describe briefly what specialty crop stakeholders outside the lead organization support this project and how all grant project stakeholders work toward the goals and outcomes of the project.

(11) Multi-state Projects. If the project is a multi-state project, identify the other states that are participating, describe how the states are going to collaborate effectively with related projects with one state assuming the coordinating role. Indicate the percent of the budget covered by each state.

Each State department of agriculture that submits an application that is reviewed and approved by AMS is to receive an estimated base grant of $171,852.89 to solely enhance the competitiveness of specialty crops. In addition, AMS will allocate the remainder of the grant funds based on the proportion of the value of specialty crop production in the state in relation to the national value of specialty crop production using the latest available (2011 National Agricultural Statistics Service (NASS) cash receipt data for the 50 States, 2009 Departamento De

Agricultura De Puerto Rico for the Commonwealth of Puerto Rico, 2007 Census of Agriculture cash receipts for Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and 2008 Census of Agriculture cash receipts for American Samoa) specialty crop production data in all states whose applications are accepted.

The amount of the base grant plus value of production available to each State department of agriculture is estimated to be:

(1) Alabama	$384,849.24
(2) Alaska	85,231.03
(3) American Samoa	202,518.42
(4) Arizona	1,305,396.81
(5) Arkansas	241,858.20
(6) California	18,070,083.26
(7) Colorado	678,827.55
(8) Connecticut	373,391.79
(9) Delaware	228,452.55
(10) District of Columbia	171,852.89
(11) Florida	4,177,122.21
(12) Georgia	1,131,614.82
(13) Guam	173,488.79
(14) Hawaii	344,884.75
(15) Idaho	991,862.03
(16) Illinois	535,776.09
(17) Indiana	371,274.35
(18) Iowa	252,205.58
(19) Kansas	238,817.41
(20) Kentucky	243,367.21
(21) Louisiana	324,467.34
(22) Maine	399,314.64
(23) Maryland	444,245.94
(24) Massachusetts	417,184.80
(25) Michigan	1,256,470.39
(26) Minnesota	670,959.58
(27) Mississippi	275,199.76
(28) Missouri	317,414.66
(29) Montana	303,333.39
(30) Nebraska	312,641.19
(31) Nevada	249,859.85
(32) New Hampshire	223,449.42
(33) New Jersey	770,362.40
(34) New Mexico	426,368.39
(35) New York	1,024,636.80
(36) North Carolina	1,072,498.14
(37) North Dakota	479,434.98
(38) Northern Mariana Islands	173,095.25
(39) Ohio	593,324.00
(40) Oklahoma	330,993.57
(41) Oregon	1,498,930.75
(42) Pennsylvania	947,711.72
(43) Puerto Rico	350,296.18
(44) Rhode Island	204,941.26
(45) South Carolina	504,662.76
(46) South Dakota	194,589.19
(47) Tennessee	470,706.73
(48) Texas	1,407,162.21
(49) U.S. Virgin Islands	172,880.39
(50) Utah	278,657.65
(51) Vermont	208,920.91
(52) Virginia	455,811.53
(53) Washington	3,227,719.05
(54) West Virginia	204,437.61
(55) Wisconsin	863,170.52
(56) Wyoming	197,138.41

Funds not obligated will be allocated pro rata to the remaining States which applied during the specified grant application period to be solely expended on projects previously approved in their State plan. AMS will notify the States as to the procedures for applying for the reallocated funds.

AMS requires applicants to submit SCBGP–FB applications electronically through the central Federal grants Web site, *www.grants.gov* instead of mailing hard copy documents. Original signatures are not needed on the SF–424 and SF–424B when applying through www.grants.gov and applicants are not required to submit any paper documents to AMS. Applicants are strongly urged to familiarize themselves with the Federal grants Web site and begin the application process well before the application deadline. For information on how to apply electronically, please consult *http://www.grants.gov/applicants/get_registered.jsp*. AMS will send an email confirmation when applications are received by the AMS office.

SCBGP–FB is listed in the "Catalog of Federal Domestic Assistance" under number 10.170 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Authority: 7 U.S.C. 1621 note.

Dated: May 6, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–11048 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends To grant to AIC Partners Group, LLC of Sylvester, Georgia, an exclusive license to U.S. Patent Application Serial No. 13/005,168, "Method and Apparatus for Measuring Peanut Moisture Content," filed on January 12, 2011.

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as AIC Partners Group, LLC of Sylvester, Georgia has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which 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.

Robert Griesbach,

Deputy Assistant Administrator.

[FR Doc. 2013–11024 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oregon State University of Corvallis, Oregon, an exclusive license to the blackberry variety named "Columbia Star," an exclusive license to the strawberry variety named "Sweet Sunrise," and an exclusive license to the strawberry variety named "Charm."

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in these plant varieties are assigned to the United States of America, as represented by the Secretary of Agriculture. The

prospective exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of these licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Robert Griesbach,

Deputy Assistant Administrator.

[FR Doc. 2013–11021 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0012]

Notice of Request for Extension of Approval of an Information Collection; Commercial Transportation of Equines for Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the commercial transportation of equines to slaughtering facilities.

DATES: We will consider all comments that we receive on or before July 8, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0012-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0012* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the commercial transportation of equines to slaughtering facilities, contact Dr. P. Gary Egrie, Veterinary Medical Officer, VS, APHIS, 4700 River Road Unit 33, Riverdale MD 20737; (301) 851–3304. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Commercial Transportation of Equines for Slaughter.

OMB Number: 0579–0160.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Federal Agriculture Improvement and Reform Act of 1996 ("the Farm Bill"), Congress gave responsibility to the Secretary of Agriculture to regulate the commercial transportation within the United States of equines for slaughter. Sections 901–905 of the Farm Bill (7 U.S.C. 1901 note) authorized the Secretary to issue guidelines for the regulation of commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. As a result of that authority, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) established regulations in 9 CFR part 88, "Commercial Transportation of Equines for Slaughter."

The minimum standards for transportation cover, among other things, the food, water, and rest provided to such equines. The regulations also require the owner/shipper of the equines to take certain actions in loading and transporting the equines and to certify that the commercial transportation meets certain requirements. In addition, the regulations prohibit the commercial transportation to slaughtering facilities of equines considered to be unfit for travel, the use of electric prods on such animals in commercial transportation to slaughter, and the use of double-deck trailers for commercial transportation of equines to slaughtering facilities.

These regulations require several information collection activities, including a USDA-APHIS Owner/Shipper Certificate Fitness to Travel to a Slaughter Facility Form/Continuation Sheet (Veterinary Services-VS Forms 10–13/10–13A), the collection of business information from any individual or other entity found to be transporting horses to a slaughtering facility, and recordkeeping.

Since the last approval of these collection activities, APHIS amended its regulations to require that owners/shippers complete VS Forms 10–13/10–13A for each movement of horses between assembly points. APHIS believes that, on average, a horse bound for slaughter will make at least one stop at an assembly point within the United States before final transport to slaughter. As a consequence, APHIS estimates that this will result in an increase in the number of responses submitted annually from 6,700 to 13,100, and increase the number of total burden hours from 2,603 to 9,803. However, this increase in burden hours also reflects reevaluation by APHIS of the time necessary for respondents to complete the forms and the time for respondents to inspect the horses prior to completion of the form, which was not previously accounted for by APHIS.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.7483 hours per response.

Respondents: Owners and shippers of slaughter horses, owners/operators of slaughtering facilities, and drivers of the transport vehicles.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 43.666.

Estimated annual number of responses: 13,100.

Estimated total annual burden on respondents: 9,803 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11027 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0010]

Notice of Request for Reinstatement of an Information Collection; National Animal Health Monitoring System; Dairy 2014 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection to support the National Animal Health Monitoring System's Dairy 2014 Study to support the dairy industry of the United States.

DATES: We will consider all comments that we receive on or before July 8, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0010-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0010, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0010* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Dairy 2014 Study, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Dairy 2014 Study.

OMB Number: 0579–0205.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors.

NAHMS' national studies are a collaborative industry and Government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting national data on livestock health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to conduct a Dairy 2014 Study as part of an ongoing series of NAHMS studies on the U.S. dairy population. This will be the fifth dairy study, and the purpose of this study is to collect information, through two on-farm questionnaires and biological sampling, to:

- Describe trends in dairy cattle health and management practices;
- Describe management practices and production measures related to animal welfare;
- Estimate the herd-level prevalence of lameness and identify housing and management factors associated with lameness;
- Evaluate dairy calf health from birth to weaning;
- Describe antibiotic use and residue prevention methods used to ensure milk and meat quality; and
- Estimate the prevalence and antimicrobial resistance patterns of foodborne pathogens.

The information collected will be used by APHIS to help define and evaluate current management practices and trends, help policymakers and industry make informed decisions, assist researchers and private enterprise to identify and focus on vital issues related to dairy-cattle health and productivity, and conduct economic analyses of the health and production of the U.S. dairy industry.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.006 hours per response.

Respondents: Dairy owners and operators.

Estimated annual number of respondents: 7,440.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 7,440.

Estimated total annual burden on respondents: 7,482 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11030 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0019]

Notice of Request for Extension of Approval of an Information Collection; Importation of Table Eggs From Regions Where Newcastle Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of table eggs from regions where Newcastle disease exists.

DATES: We will consider all comments that we receive on or before July 8, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0019-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0019* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of table eggs from regions where Newcastle diseases exists, contact Dr. Magde Elshafie, Senior Staff Veterinary Medical Officer, TTS, NCIE, APHIS, 4700 River Road Unit 40, Riverdale MD 20737; (301) 851–3300. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Table Eggs From Regions Where Newcastle Disease Exists.

OMB Number: 0579–0328.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

In part 94, § 94.6 governs the importation of carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds to prevent the introduction of Newcastle disease and highly pathogenic avian influenza into the United States. Various conditions for the importation of table eggs from regions where Newcastle disease exists, including Mexico, apply and involve information collection activities, including the issuance of certificates and application of seals by foreign national or accredited veterinarians.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Salaried veterinary officer of the national government of the region of origin or a veterinarian accredited by the National Government of Mexico.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 2.

Estimated total annual burden on respondents: 3.0 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11026 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD06

Notice of Reopening of Public Comment Period—Proposed Directives for Forest Service Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Forest Service is reopening the public comment period for the proposed directive regarding land management planning for an additional 15 days. The original notice called for comments to be submitted by April 29, 2013.

DATES: Comments must be received, in writing, on or before May 24, 2013.

ADDRESSES: Submit comments concerning the proposed directives through one of the following methods:

1. *Public participation portal: https://cara.ecosystem-management.org/Public/CommentInput?Project=30641.* Comments may also be provided through the Federal rulemaking portal: *http://www.regulations.gov.*

2. *Facsimile:* Fax to: 503.224.1851. Please identify your comments by including "RIN 0596–AD06" or "planning directives" on the cover sheet or the first page.

3. *U.S. Postal Service:* The mailing address is: USDA Forest Service Planning Directives Comments, P.O. Box 40088, Portland, OR 97240.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The Agency cannot confirm receipt of comments. Individual wishing to inspect comments should call Jody Sutton at 801.517.1020 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Annie Eberhart Goode, (202) 205–1056, Planning Specialist, Ecosystem Management Coordination.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–839 between 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service has proposed Land Management Planning Directives for inclusion in the Forest Service Handbook (FSH 1909.12) and Manual (FSM 1920) establishing procedures and responsibilities for implementing the National Forest System (NFS) land management planning regulation published in the **Federal Register** on April 9, 2012 (77 FR 21162) and set out at 36 CFR part 219. To provide the public the opportunity to review and comment on these proposed directives, the Agency initiated a 60-day comment period which closed on April 29, 2013. The Agency has decided to reopen the comment period for an additional 15 days to provide an opportunity to gather additional public input to inform the final Land Management Planning Directives.

Dated: May 2, 2013.

Thomas L. Tidwell,

Chief, U.S. Forest Service.

[FR Doc. 2013–10998 Filed 5–8–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2013, the Department of Commerce (the "Department") published the *Preliminary Results* [1] of the 2011–2012 administrative review of the antidumping duty order on magnesium metal from the People's Republic of China ("PRC"), in which it found that the one respondent company, Tianjin Magnesium International. Co., Ltd ("TMI"), had no shipments during the period of review ("POR"). The POR is April 1, 2011, through March 31, 2012. We gave interested parties an opportunity to comment on the *Preliminary Results*, but none were received. Therefore, we continue to find that TMI had no reviewable transactions of subject merchandise during the POR.

DATES: *Effective Date:* May 9, 2013.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from the PRC, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS number is provided for convenience and customs purposes, the written product description, available in *Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China*, 70 FR 19928 (April 15, 2005), remains dispositive.

Final Finding of No Shipments

As in the *Preliminary Results*, because TMI submitted a timely no-shipment certification and U.S. Customs and Border Protection ("CBP") data indicated that there were no reviewable transactions for this company during the POR, we continue to find that TMI had no reviewable transactions of subject merchandise.[2]

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department recently announced a refinement to its assessment practice in non-market economy cases.[3] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.[4]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the "Act"): (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC

[1] *See Magnesium Metal from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 1834 (January 9, 2013) ("*Preliminary Results*").

[2] *See Preliminary Results.*

[3] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[4] *See id.*

exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 30, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–11056 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 29, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13–008. Applicant: University of Hawaii at Manoa, 2800 Woodlawn Drive, Suite 198, Honolulu, HI 96822. Instrument: Telescope. Manufacturer: Advanced Mechanical and Optical Systems, Belgium. Intended Use: The instrument will be used in conjunction with the Panoramic Survey Telescope & Rapid Response System (Pan-STARRS), to discover and characterize Earth-approaching objects, both asteroids and comets that might pose a danger to the Earth, as well as a wide range of other research areas of astronomy. Critical performance characteristics include the ability to detect objects much fainter than has hitherto been possible with sufficient resolution to measure both the position and brightness level to the required precision, that the instrument be sufficiently robust and reliable that it can carry out continuous observations without direct human supervision under both benign and harsh meteorological observing conditions, and servicing and maintenance that can be performed as quickly as possible to minimize system down time. The heat released by the electrical/electronic components cannot have an impact on the system point spread function that exceeds a combined total of 0.1 arcseconds. Other key features that were not proposed by domestic vendors include the use of 36 actuators to control the shape of the telescope's primary mirror, active cooling of the mechanical structure containing the primary mirror, design and performance analysis of the structures holding the telescope secondary mirror in position, the mechanical design and performance analysis of the telescope "truss", active cooling of the motors that move the telescope, additional performance margin of the telescope motors to provide additional power and torque in the presence of high motor loads, and the serviceability of several key telescope components that traditionally are both prone to failure and hard to get at, as well as allowing the removal of extremely difficult components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 4, 2013.

Docket Number: 13–009. Applicant: Max Planck Florida Institute for Neuroscience, 1 Max Planck Way, Jupiter, FL 33458. Instrument: Serial Block face microtome. Manufacturer: Gatan, United Kingdom. Intended Use: The instrument will be used to analyze neural circuits employing principally bioimaging, electrophysiology and genetic approaches to understand visual perception and the organization of the visual cortex, synapse physiology and mechanisms of synaptic signaling and computation, the molecular mechanisms of synaptic function, the cellular organization of cortical circuit function, and the digital anatomy of the brain. To precisely identify synaptic contacts between neurons and distinguish between overlapping processes or actual synaptic contacts requires high resolution imaging with an Electron Microscope (EM) including 3D reconstruction of each process and its surroundings. Furthermore, relatively large volumes of brain should be imaged to cover the entire region and profile even for a single neuron. The instrument allows automatic imaging of multiple regions of interest on the sample and stage montaging for large fields of view, and a cutting thickness down to 15 nm. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 11, 2013.

Docket Number: 13–012. Applicant: New Mexico Institute of Mining and Technology, 801 Leroy Place, Socorro, NM 87801. Instrument: Delay-Line (DL) Trolley. Manufacturer: University of Cambridge/Cavendish Laboratory, United Kingdom. Intended Use: The instrument will be used to make extremely high-resolution images of a diverse range of astronomical objects. The images made using the instrument will allow a variety of astrophysical processes in the target objects to be investigated, such as protostellar accretion, disk clearing as evidence for planet formation, jest, outlfows and magnetically channeled accretion, and the detection of sub-stellar companions. In order to obtain interference fringes, the path lengths traveled by the light from celestial objects via the telescopes to the point where interference takes place must be equalized to a few microns. The extra path (delay) that must be inserted varies continuously as the Earth rotates, and depends on the location of the target in the sky. The instrument is used within the

Magdalena Ridge Observatory Interferometer to equalize these path lengths—one trolley for each telescope—by acting as a continuously movable retro-reflector. For most of the sky to be accessible, a delay range approximately equal to the longest inter-telescope separation must be available, requiring an unprecedented monolithic delay line length of almost 200 m. The need to accommodate 350 m baselines places a unique combination of requirements on the delay lines and hence the Delay Line Trolleys that run within them. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 3, 2013.

Docket Number: 13–014. Applicant: Max Planck Florida Institute for Neuroscience, 1 Max Planck Way, Jupiter, FL 33458. Instrument: Two-Photon Laser Scanning Microscope. Manufacturer: Femtonics Ltd., Hungary. Intended Use: The instrument will be used to examine the connectivity and functional computations performed by individual neurons in the primary visual cortex of tree shrews, as well as to study the population mechanisms responsible for rapid development of direction selectivity in the ferret primary visual cortex. Experiments will include *in vivo* two-photon microscopy experiments that examine the response properties of neurons, two-photon imaging in the dendritic tree of single neurons to monitor dendiritc inputs and integration as evoked by visual stimuli, and two-photon imaging in the visual cortex to monitor how large populations of cells develop into a coherent circuit that capably detects directional movement in a visual space. The instrument is unique in that it allows for fast, random-access two-photon imaging in three dimensions. The experiments depend on this fast 3D scanning to capture sufficient data from the dendrites of a single neuron or large numbers of cells in a neuronal population. The instrument's capabilities are achieved through the use of acousto-optical deflectors in x-, y-, and z- axes and are unmatched by galvanometric scanning systems that are bounded by inertial constraints. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 22, 2013.

Docket Number: 13–015. Applicant: IUP Research Institute, 1179 Grant St., Ste. 1, Indiana, PA 15701. Instrument: IMIC Digital Microscope. Manufacturer: TILL Photonics Gmbh, Germany. Intended Use: The instrument will be used to resolve whether changes in intracellular ion activity are circadian in nature, identify the underlying mechanisms for stem cell regeneration in damaged tissue, and examine the regulatory mechanisms for metabolic activity in yeast. The microscopic imaging will be used to investigate cellular properties of mice, zebrafish, planaria, yeast, and paramecium, as well as to analyze the absorption and fluorescence of ceramic optical material. Intracellular ion movement requires fluorescent confocal and FRET imaging. The fate-mapping of the stem cells requires fast fluorescent scanning provided by the instrument. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 26, 2013.

Dated: May 3, 2013.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2013–11065 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Green Sturgeon Endangered Species Act Take Exceptions and Exemptions

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 8, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Melissa Neuman, (562) 980–4115 or *Melissa.Neuman@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension, without change, of a currently approved information collection.

The Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris;* hereafter, "Southern DPS") was listed as a threatened species in April 2006. Protective regulations under section 4(d) of the Endangered Species Act (ESA) were promulgated for the species on June 2, 2010 (75 FR 30714) (the final ESA 4(d) Rule). To comply with the ESA and the protective regulations, entities must obtain take authorization prior to engaging in activities involving take of Southern DPS fish unless the activity is covered by an exception or exemption. Certain activities described in the "exceptions" provision of 50 CFR 223.210(b) are not subject to the take prohibitions if they adhere to specific criteria and reporting requirements. Under the "exemption" provision of 50 CFR 223.210(c), the take prohibitions do not apply to scientific research, scientific monitoring, and fisheries activities conducted under an approved 4(d) program or plan; similarly, take prohibitions do not apply to tribal resource management activities conducted under a Tribal Plan for which the requisite determinations described in 50 CFR 223.102(c)(3) have been made. In order to ensure that activities qualify under exceptions to or exemptions from the take prohibitions, local, state, and federal agencies, non-governmental organizations, academic researchers, and private organizations are asked to voluntarily submit detailed information regarding their activity on a schedule to be determined by National Marine Fisheries Service (NMFS) staff. This information is used by NMFS to (1) Track the number of Southern DPS fish taken as a result of each action; (2) understand and evaluate the cumulative effects of each action on the Southern DPS; and (3) determine whether additional protections are needed for the species, or whether additional exceptions may be warranted. NMFS designed the criteria to ensure that plans meeting the criteria would adequately limit impacts on threatened Southern DPS fish, such that additional protections in the form of a federal take prohibition would not be necessary and advisable.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0613.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Not-for-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 67.

Estimated Time per Response: Written notification describing research, monitoring or habitat restoration activities, 40 hours each; development of fisheries management and evaluation plans or state 4(d) research programs, 40 hours each; reports, 5 hours; development of a tribal fishery management plan, 20 hours.

Estimated Total Annual Burden Hours: 1,528.

Estimated Total Annual Cost to Public: $200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 2013.

Gwellnar Banks,

Management Analyst, Office af the Chief Infarmation Officer.

[FR Doc. 2013–11010 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection—Renewal; Comment Request; Educational Partnership Program (EPP) and Ernest F. Hollings Undergraduate Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 8, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Meka Laster, 301–713–9437 or *meka.laster@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. The National Oceanic and Atmospheric Administration (NOAA) Office of Education (OEd) collects, evaluates and assesses student data and information for the purpose of selecting successful candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The OEd requires applicants to its student scholarship programs to complete an application for NOAA undergraduate scholarship programs. Part of the application package requires completion of a NOAA student scholar reference form in support of the scholarship application by academic professors/advisors. NOAA OEd student scholar alumni are also requested to provide information to NOAA for internal tracking purposes. NOAA OEd grantees are required to update the student tracker database with the required student information. In addition, the collected student data supports NOAA OEd's program performance measures.

II. Method of Collection

Electronic applications and electronic forms are required from participants, and the primary methods of submittal are email and Internet transmission. Approximately 1% of the application and reference forms may be mailed.

III. Data

OMB Control Number: 0648–0568.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals; business or other for-profit organizations; not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 3,004.

Estimated Time per Response: Student and Performance Measures Tracking System database form, 17 hours; undergraduate application form, 8 hours; reference forms, 1 hour; alumni update form, 1 hour.

Estimated Total Annual Burden Hours: 8,840.

Estimated Total Annual Cost to Public: $300 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 3, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Infarmatian Officer.

[FR Doc. 2013–11009 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Developing Social Wellbeing Indicators for Marine Management

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 8, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW.. Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karma Norman, (206) 302–2418 or *karma.norman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

In order to address Executive Order 13547 requirements to promote human wellbeing through implementation of ecosystem-based management (EBM), NOAA Fisheries social scientists must collect a broad range of social, cultural, and economic information that is currently unavailable. This research is designed to improve social science data related to the human dimensions of ecosystem-based management and marine spatial planning related to marine and coastal management needs by: (1) Investigating how marine and coastal conditions and management affect human wellbeing; (2) developing and testing theories and methods for defining and measuring human wellbeing within an EBM model; and (3) identifying indicators of wellbeing for use in such a model. This study will focus on marine- and coast-related communities of the US West Coast in order to inform the California Current Integrated Ecosystem Assessment (IEA) "Resilient and Economically Viable Coastal Communities" section. It will assist managers with evaluating how different management strategies may affect the wellbeing of marine-dependent and coastal communities beyond commercial harvests and economic conditions, such as in terms of health, cultural values, and social cohesion. Combined with a literature review, interviews and focus groups will assist with identifying salient stakeholder groups and locally meaningful indicators in the study area. A survey will enable researchers to test the validity of the resulting selected suite of indicators with broader samples of each stakeholder group.

II. Method of Collection

Interview and focus group responses will be collected through audio-recordings, handwritten and typed notes, and simple questionnaires. Survey responses will be collected through paper and/or electronic forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations; not-for-profit institutions; federal government; state, local, or tribal government; individuals or households; farms.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: Interviews, 1 hour; focus groups, 2 hours; surveys, 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–11011 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC665

Mid-Atlantic Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet twice to develop recommendations for 2014 MSB specifications. The first meeting will be in Gloucester, MA and the second will be via webinar.

DATES: The first meeting will be May 23, 2013, starting at 10 a.m. and ending by 5 p.m. The second meeting will be May 28, 2013, starting at 1 p.m. and ending by 5 p.m.

ADDRESSES: The May 23 meeting will be at the NMFS Northeast Regional Office: 55 Great Republic Drive, Gloucester, MA 01930; telephone: (978) 281–9300. The May 28 meeting will be via webinar—access information will be posted to the Council's Web site: *http://www.mafmc.org/.* The public may also participate in the May 28 meeting in person at the Council Address listed below if desired (please contact the Council ahead of time).

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet twice to develop recommendations for 2014 MSB specifications. The first meeting will be in Gloucester, MA and the second will be via webinar. The May

23 Gloucester meeting will focus on developing options for River Herring and Shad Catch Caps for implementation in 2014 per Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Implementation of Amendment 14 is expected by January 1, 2014. This first meeting will be held jointly with the New England Fishery Management Council's (NEFMC) Atlantic Herring Plan Development Team. The NEFMC is considering River Herring and/or Shad catch caps for the Atlantic Herring fishery so a joint meeting has been arranged. The May 28 webinar meeting will address any outstanding River Herring and Shad Cap issues as well as other MSB management measures for 2014. If you would like assistance with the webinar connection, please contact M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 6, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–11040 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC662

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Enforcement Consultants (EC) will hold an online webinar, which is open to the public.

DATES: The webinar will be held Thursday, May 23, 2013, from 10 a.m. to 12 noon Pacific Time.

ADDRESSES: To attend the EC webinar, please reserve your seat by visiting *https://www2.gotomeeting.com/register/689010826.* If requested, enter your name, email address, and the webinar ID, which is 689–010–826. Once registered, participants will receive a confirmation email message that contains detailed information about viewing the event. To only join the audio teleconference of the webinar from the U.S. or Canada, call the toll number +1 (914) 339–0021 (note: this is not a toll-free number) and use the access code 328–966–651 when prompted.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the webinar is to develop recommendations on the vessel monitoring system (VMS) agenda item scheduled for the June 2013 Pacific Council meeting. The main VMS issue to be discussed pertains to fishery declarations required by vessels with VMS units acquired for use in the commercial groundfish fishery. Other items on the June 2013 Pacific Council agenda may also be discussed during the meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EC'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 Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: May 6, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–11039 Filed 5–8–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–C0005]

Williams-Sonoma, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Williams-Sonoma, Inc., containing a civil penalty of $987,500, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 24, 2013.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Kelly M. Moore, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7447.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 6, 2013.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (CPSA) and 16 CFR 1118.20, Williams-Sonoma, Inc. (WS), and the United States Consumer Product Safety Commission (Commission), through its staff (Staff), hereby enter into this Settlement Agreement (Agreement). The Agreement, and the incorporated attached Order, resolve Staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, the Staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. WS is a corporation, organized and existing under the laws of the State of Delaware, with its principal corporate

office located at 3250 Van Ness Avenue, San Francisco, CA 94109.

4. At all times relevant to this Agreement, Pottery Barn, Inc. was a wholly-owned subsidiary of WS.

Staff Charges

5. Between 2003 and 2008, WS imported into the United States approximately 30,000 wooden hammock stands (the Products) and distributed them exclusively through Pottery Barn and PBteen catalogs and Web sites, and Pottery Barn Outlet stores. The Products were sold nationwide for approximately $300.

6. The Products are wooden hammock stands for outdoor use that are held together by metal brackets. Cloth hammocks designed for one or multiple users can be hooked to the steel eye bolts located on the Product's vertical support beams. The Products are "consumer products" "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (11), and at all relevant times, WS was a "manufacturer" and "retailer" of those items, as such terms are defined or used in sections 3(a) (11) and (13) of the CPSA, 15 U.S.C. 2052(a)(11) and (13).

7. The Products are defective because water and moisture can become trapped in the metal brackets, which can cause the wooden beams to rot inside the bracket. The Products were marketed for outdoor use, where they would routinely be exposed to rain and other inclement weather. Because the rotting was occurring inside the metal bracket, where it was hidden from view, there sometimes was no outward indication to consumers that the wood was rotting, until a consumer sat in the hammock and the beams broke. This posed fall and laceration hazards to consumers.

8. WS received notice of a Product failure as early as November 2004, when a consumer reported to WS that the vertical support beam of the Product's wooden frame had snapped, causing her guest to fall to the ground and sustain injury.

9. On or before October 28, 2006, the date by which WS received its eighth incident report involving the Products,[1] WS had obtained sufficient information that reasonably supported the conclusion that the Products contained a defect or possible defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death. WS was required to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

10. Despite having information regarding the Products' defect, WS failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

11. WS did not file its Full Report with the Commission until September 11, 2008. WS recalled the Products on October 1, 2008. By that time, WS was aware of 45 incidents involving the Products.

12. In failing to inform the Commission about the Products immediately, WS knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, WS is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Williams-Sonoma, Inc.

14. WS neither admits nor denies the charges set forth in paragraphs 5 through 13 above, including but not limited to, the charge that the Products contained a defect that could create a substantial product hazard or create an unreasonable risk of serious injury or death, and the contention that WS failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over the matter involving the Products described herein and over WS.

16. In settlement of Staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, WS shall pay a civil penalty in the amount of nine hundred eighty-seven thousand five hundred dollars ($987,500) within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.*

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by WS or a determination by the Commission that WS violated the CPSA's reporting requirements.

18. Following Staff's receipt of this Agreement executed on behalf of WS, Staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

19. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon WS; and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

20. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon WS; and (ii) and the date of issuance of the final Order, for good and valuable consideration, WS hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether WS failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

21. WS shall implement and maintain a compliance program designed to ensure compliance with the safety statutes and regulations enforced by the Commission that, at a minimum, contains the following elements: (i) Written standards and policies; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) effective communication of company compliance-related policies and procedures to all employees through training programs or otherwise; (iv) senior manager responsibility for

[1] At least one consumer was injured in each of the eight incidents reported to WS through October 28, 2006; in one such incident, two consumers reported injury. The incident report WS received on October 28, 2006 included an account of the ninth Product-related injury then known to WS.

compliance; (v) board oversight of compliance (if applicable); and (vi) retention of all compliance-related records for at least five (5) years and availability of such records to Staff upon request.

22. WS shall maintain and enforce a system of internal controls and procedures designed to ensure that: (i) Information required to be disclosed by WS to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete and accurate; and (iii) prompt disclosure is made to WS's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect WS's ability to record, process and report to the Commission in accordance with applicable law.

23. Upon request of Staff, WS shall provide written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls. WS shall cooperate fully and truthfully with Staff and shall make available all information, materials, and personnel deemed necessary by Staff to evaluate WS's compliance with the terms of the Agreement.

24. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

25. WS represents that the Agreement: (i) Is freely and voluntarily entered into, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of WS, enforceable against WS in accordance with its terms. The individuals signing the Agreement on behalf of WS represent and warrant that they are duly authorized by WS to execute the Agreement.

26. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute this Agreement.

27. The Agreement is governed by the laws of the United States.

28. The Agreement and the Order shall apply to, and be binding upon, WS and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject WS, and each of its successors, transferees and assigns, to appropriate legal action.

29. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

30. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

31. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

32. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and WS agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Dated: _____

WILLIAMS-SONOMA, INC.
By: _____

Julie P. Whalen,
Executive Vice President, Chief Finonciol Officer
Williams-Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, CA 94109
Dated: 4/25/13
By: _____

Eric A. Rubel,
Counsel to Willioms Sonomo, Inc.
Arnold & Porter LLP
555 Twelfth Street NW.
Washington, DC 20004–1206

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Stephanie Tsacoumis,
General Counsel
Mary B. Murphy,
Assistont Generol Counsel
Dated: 4/25/13
By: _____

Kelly M. Moore,
Trial Attorney, Division of Complionce, Office of the Generol Counsel

Order

Upon consideration of the Settlement Agreement entered into between Williams-Sonoma, Inc. (WS), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over WS, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

Ordered that the Settlement Agreement be, and is, hereby, accepted; and it is

further ordered that WS shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of nine hundred eighty-seven thousand five hundred dollars ($987,500) within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of WS to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by WS at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If WS fails to make such payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the *3rd* day of *Moy,* 2013.
BY ORDER OF THE COMMISSION:

Todd A. Stevenson,
Secretory, U.S. Consumer Product Sofety Commission

[FR Doc. 2013–11029 Filed 5–8–13; 8:45 am]
BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Learn and Serve Progress Report Information Collection for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sylvie Mortimer, at (202) 606–6749 or email to *smortimer@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–

3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on Thursday, February 28, 2013. This comment period ended April 29, 2013. No public comments were received from this Notice.

Description: CNCS is seeking approval of Learn and Serve Progress Report Information Collection which is used by Learn and Serve grantees to report progress.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve Progress Report Information Collection.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: The public affected are the beneficiaries of the Learn and Serve grants and their broad communities.

Total Respondents: Twenty-three grantees respond to this information request.

Frequency: One final progress report for each grantee.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 11.5 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 2, 2013.

Michael Berning,

Director of the Office of Field Liaison.

[FR Doc. 2013–10967 Filed 5–8–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0097]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete seven Systems of Records Notices.

SUMMARY: The Defense Information Systems Agency is deleting seven systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jeanette Weathers-Jenkins, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

KEUR.09, Noncombatant Information Card, AEZ Form 6–106 (February 22, 1993, 58 FR 10562).

REASON:

This system of records notice is no longer required; USAREUR no longer has a Non-Combatant Evacuation Operation (NEO) Program which was rescinded over 10 years ago. All records have met their retention; therefore, KEUR.09, Noncombatant Information Card, AEZ Form 6–106, can be deleted.

Deletions:

KWHC.02, Military Personnel Files System (February 22, 1993, 58 FR 10562).

K890.04, Military Personnel Management/Assignment Files (June 16, 2009, 74 FR 28481).

KDEC.06, Nominations/Enrollments for Training Courses (February 22, 1993, 58 FR 10562).

K890.07, Education, Training, and Career Development Data System (February 22, 1993, 58 FR 10562).

KWHC.01, Agency Training File System (June 16, 2009, 74 FR 28480).

KWHC.05, Personnel Information System (February 22, 1993, 58 FR 10562).

REASON:

Based on a recent review of the systems of records notices KWHC.02, Military Personnel Files System (February 22, 1993, 58 FR 10562), K890.04, Military Personnel Management/Assignment Files (June 16, 2009, 74 FR 28481) and KDEC.06, Nominations/Enrollments for Training Courses (February 22, 1993, 58 FR 10562), K890.07, Education, Training, and Career Development Data System

(February 22, 1993, 58 FR 10562), KWHC.01, Agency Training File System (June 16, 2009, 74 FR 28480), and KWHC.05, Personnel Information System (February 22, 1993, 58 FR 10562), it has been determined that they are covered by DoD wide systems of records notices DMDC 02 DoD, Defense Enrollment Eligibility Reporting System (DEERS) (November 21, 2012, 77 FR 69807) and DMDC 01, Defense Manpower Data Center Data Base (November 23, 2011, 76 FR 72391); and therefore, the notices above can be deleted. The DoD-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/component/osd/DMDC01.html, http://dpclo.defense.gov/privacy/SORNs/component/osd/DMDC02.html.*

[FR Doc. 2013–10987 Filed 5–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0098]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Defense Finance and Accounting Service is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
T–4500

SYSTEM NAME:

Defense Transportation Payment System (DTRS) Records (November 12, 2008, 73 FR 66861)

REASON:

System was retired and replaced by T7225a, Computerized Accounts Payable System (CAPS) (November 14, 2007, 72 FR 64057); all records were transferred to CAPS; therefore, T–4500, Defense Transportation Payment System (DTRS) can be deleted.

Deletion:
T4500a

SYSTEM NAME:

Defense Transportation Payment System—Accounting (DTRS–A) Records (October 1, 2008, 73 FR 57070)

REASON:

System was retired and replaced by T7225a, Computerized Accounts Payable System (CAPS) (November 14, 2007, 72 FR 64057); all records were transferred to CAPS; therefore, T4500a, Defense Transportation Payment System—Accounting (DTRS–A) Records can be deleted.

[FR Doc. 2013–10985 Filed 5–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0095]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Defense Finance and Accounting Service is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, (317)510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2013.

Aaron Siegel,

Alternate DoD Federal Register Liaison Officer, Department of Defense.

DELETION:

T7340a

SYSTEM NAME:

Battle Injured/Non-Battle Injured Pay Account Management System (March 21, 2006, 71 FR 14186).

REASON:

The system was merged with T7340, Defense Joint Military Pay System-Active Component (March 5, 2013, 78 FR 14283); therefore, T7340a, Battle Injured/Non-Battle Injured Pay Account Management System can be deleted.

[FR Doc. 2013–10988 Filed 5–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0096]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Defense Finance and Accounting Service is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
T–7300a

SYSTEM NAME:

Voucher Processing System (VPS) (December 12, 2008, 73 FR 75679)

REASON:

System was merged with T7300c, Corporate Electronic Document Management System (CEDMS) (December 12, 2008, 73 FR 75681); therefore, T–7300a, Voucher Processing System (VPS) can be deleted.

T7346a

SYSTEM NAME:

Reserve and National Guard Members' Status Tracking System (July 9, 2007, 72 FR 37199)

REASON:

System was merged with T7344, Defense Joint Military Pay System-Reserve Component (March 5, 2013, 78 FR 14281); therefore, T7346a, Reserve and National Guard Members' Status Tracking System can be deleted.

[FR Doc. 2013–10986 Filed 5–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0026]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 3, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

F036 AFPC N

SYSTEM NAME:

Air Force Personnel Test 851, Test Answer Sheets (January 22, 2009, 74 FR 4012).

REASON:

This is a duplicate system of records; active records are covered under SORN F036 AFPC K, Enlisted Promotion Testing Record (March 21, 2013, 78 FR 17386). Therefore, SORN F036 AFPC N, Air Force Personnel Test 851, Test Answer Sheets, can be deleted.

[FR Doc. 2013–10983 Filed 5–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Modification of Permit Application and Intent for Additional Public Scoping for an Environmental Impact Statement for the Port of Gulfport Expansion Project, Harrison County, Mississippi (Department of the Army Permit Number SAM–2009–1768–DMY)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District (USACE) announces a modification to a project proposed by the Mississippi State Port Authority (MSPA) for which an Environmental Impact Statement (EIS) is being prepared. The Mississippi Development Authority (MDA) and the National Marine Fisheries Service (NMFS) are cooperating agencies in the preparation of the EIS. The proposed port expansion project involves impacting up to 200 acres of open-water bottom in the Mississippi Sound from the construction of wharfs, bulkheads, terminal facilities, container storage areas, intermodal container transfer facilities, dredging and dredged material disposal and infrastructure, and construction of a breakwater of approximately 4,000 linear feet. The recently received permit application modification proposes additional dredging and dredged material placement to modify the Gulfport Harbor Federal Navigation Channel (FNC) for a length of approximately 20 miles from the current federally authorized dimensions. The federally authorized turning basin would also be modified, as would the proposed turning basin expansion. The proposed project will include modifications to the authorized FNC and other navigation features to support a navigable channel depth of up to 47 feet in the Mississippi Sound and 49 feet in the Bar Channel plus advance maintenance and allowable over depth requirements. Modification to navigation features adjacent to the port facilities include deepening the existing Federal turning basin area and port berthing areas, a turning basin expansion, and new berthing areas. Widening the channel may be requested based on results of planned ship simulations. Final channel design and associated environmental impacts will be addressed during the permitting and EIS process. The EIS will evaluate the effects of construction and long term effects of the proposed expansion and channel modification, including placement of new work and maintenance dredged material in beneficial use sites or other placement areas, such as open water and ocean dredged material disposal sites. Alternatives to the proposed action will be evaluated in the EIS, which will assist the USACE in deciding whether to issue a Department of the Army permit.

The purpose of this Notice of Intent is to inform and educate the public of changes to the proposed project; invite public participation in the EIS process; announce the plans for an additional public scoping meeting; solicit public comments for consideration in establishing the scope and content of the EIS; and provide notice of potential impacts to open-water benthic and other habitats potentially impacted by the project.

DATES: A scoping meeting will be held on May 21, 2013. Comments will be accepted in written format at the scoping meeting or via mail/email until June 17, 2013. To ensure consideration, comments should be post-marked by this date. Late comments will be considered to the extent practicable.

ADDRESSES: The scoping meeting will be held at the Courtyard Marriott Gulfport Beachfront Hotel, 1600 East Beach Boulevard, Gulfport, MS. Written comments regarding the proposed EIS scope or permit application modifications should be addressed to Mr. Damon M. Young, P.G. USACE, Mobile District, Post Office Box 2288, Mobile, Alabama 36628. Individuals who would like to electronically provide comments should contact Mr. Young by electronic mail: *port.gulfporteis@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: For information about this project, to be included on the mailing list for future updates and meeting announcements, or to receive a copy of the DRAFT EIS when it is issued, contact Damon M. Young, P.G., at the USACE at (251) 694–3781 or the address provided above. Mr. Ewing Milam, at the MDA can also be contacted for additional information at P.O. Box 849, Jackson, Mississippi 39205–0849, telephone (601)–359–2157 or by electronic mail at *emilam@mississippi.org.*

SUPPLEMENTARY INFORMATION:

1. *Background:* The Gulfport Harbor Navigation Project was adopted by the Rivers and Harbors Act approved on July 3, 1930 (House Document Number 692, 69th Congress, 2nd session) and the Rivers and Harbors Act approved on June 30, 1948 (House Document Number 112, 81st Congress, 1st session). Construction of the existing Gulfport Harbor commenced in 1932 and was completed in 1950. The FNC is approximately 20 miles in length, including 11 miles of channel in the Mississippi Sound (Sound Channel), 2 miles of Bar Channel, and 7 miles of channel in the Gulf of Mexico (Gulf Channel). Authorization to conduct improvements to the harbor was issued in the Fiscal Year 1985 Supplemental Appropriations Act (Pub. L. 99–88). The Water Resources Development Acts (WRDAs) 1986 and 1988 further modified the previous authorization to cover widening and deepening and thin-layer disposal, respectively. The authorized deepening was completed in 1993. In 2012 the channel was widened to the federally authorized dimensions. The navigation channel is currently federally authorized at 36 feet deep and 300 feet wide in the Sound Channel and 38 feet deep and 400 feet wide in the Bar and Gulf Channels. The Port's North Harbor (Inner Harbor) is authorized at a depth of 32 feet and the South Harbor (Outer Harbor) and Gulfport Turning Basin are authorized at a depth of 36 feet. A Department of the Army Permit MS96–02828–U was issued in 1998 authorizing an 84-acre expansion to fill the West Pier to construct new tenant terminals and infrastructure. Phases I and II of that project are complete and Phase III is currently under construction.

2. *Location:* The proposed Port of Gulfport Expansion Project is located in the City of Gulfport, Harrison County, Mississippi. The proposed project is approximately 80 miles west of Mobile, Alabama, and 80 miles east of New Orleans, Louisiana. The Port encompasses approximately 184 acres

and is located within 5 miles of the Gulf Intracoastal Waterway (GIWW) and approximately 7 miles south of Interstate Highway 10. The FNC runs from the Port, between Cat and West Ship islands (in Ship Island Pass) into the Gulf of Mexico and is approximately 20 miles long.

3. *Work:* The proposed project involves filling of up to 200 acres of open-water bottom in the Mississippi Sound, the construction of wharfs, bulkheads, terminal facilities, container storage areas, intermodal container transfer facilities, expansion of the existing turning basin, dredging and dredged material disposal and infrastructure, and construction of a breakwater of approximately 4,000 linear feet. The proposed expanded port facility will be elevated 25 feet above sea level to provide protection against future tropical storm surge events. The permit application modification for the proposed project includes deepening and possible widening of the existing FNC from the federally authorized dimensions. The federally authorized turning basin would also be modified, as would the proposed adjacent turning basin expansion. A Department of the Army permit is required for the proposed project, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1251), Section 10 of the Rivers and Harbors Act (33 U.S.C. 403), and Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401–1445, 16 U.S.C. 1431 et seq., also 33 U.S.C. 1271).

An EIS is being prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), and the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508) to assess the potential environmental impacts associated with the construction, operation, and maintenance of the proposed project as submitted and modified by the MSPA.

4. *Need:* According to the MSPA, this project will contribute to the long-term economic development of Mississippi and the Gulf Coast region by expanding the Port footprint and facilities to increase cargo throughput, provide additional employment opportunities, and to increase the economic benefits produced by the Port. This project is needed to expand the Port's current footprint, thus providing an opportunity to increase the Port's capacity for moving cargo and growing. Specific alternatives are being developed as part of the EIS process and feedback provided during the additional scoping meeting will be taken into consideration.

5. *Affected Environment:* Environmental characteristics that may be affected by the proposed project include geological, chemical, biological, physical, socioeconomic, and commercial and recreational activities. Offshore, the navigation channel extends 20 miles south into the Gulf of Mexico, passing close to the western end of Ship Island. On-shore, the regional environment is characterized as Coastal Lowlands, and the shore area, where not developed, consists typically of gently undulating swampy plains. The beach area is man-made and bordered by constructed seawalls. The existing Port, as part of the man-made environment of Gulfport, is constructed on fill material. The Gulfport area is well developed. Beyond the seawalls are extensive commercial and residential developments. The nearshore and offshore area is known for its valuable resources as a productive fishery and is also utilized extensively for commercial and recreational shipping and boating.

6. *Applicable Environmental Laws and Policies:* The proposed project could result in both beneficial and negative environmental impacts. These impacts will be evaluated in the EIS in accordance with applicable environmental laws and policies, which include NEPA; WRDA; Endangered Species Act; Clean Water Act; Clean Air Act; U.S. Fish and Wildlife Coordination Act; National Historic Preservation Act; Coastal Barrier Resources Act; Magnuson–Stevens Fishery Conservation and Management Act; Coastal Zone Management Act; Marine, Protection, Research, and Sanctuaries Act; Rivers and Harbors Act; National Marine Sanctuaries Act; Fishery Conservation Act; Marine Mammal Protection Act; Executive Order 12898, Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risk (among other Executive Orders); and Ports and Waterways Safety Act.

7. *Preliminary Identification of Environmental Issues:* The following list of environmental issues has been tentatively identified for analysis in the EIS. This list was developed during preliminary internal scoping, through previous public scoping efforts, and from information from similar projects, and is neither intended to be all inclusive nor a predetermined set of potential impacts. It is presented to facilitate public comment on the planned scope of the EIS. Additions to or deletions may occur as a result of the public scoping process. Preliminary identified environmental issues include but are not limited to the loss of aquatic resources (impact to potential submerged and shoreline aquatic habitat); water quality; salinity and flows; sediment transport and currents; threatened and endangered species (including critical habitat and essential fish and shellfish habitat); air quality; traffic; socioeconomics; and impacts to low income and minority populations. The evaluation will consider alternatives, secondary and cumulative impacts, and mitigation.

8. *Scoping meeting:* A public scoping meeting was held in spring of 2011 in Gulfport, Mississippi to solicit comments from the public and agencies in regards to the original permit application and proposed project. To ensure that all of the issues related to this proposed project and permit action modification are addressed, the USACE will conduct an additional public scoping meeting in which agencies, organizations, and members of the general public are invited to present comments or suggestions with regard to the range of actions, alternatives, and potential impacts to be considered in the EIS, given the proposed project changes. The scoping meeting will be held at the Courtyard Marriott Gulfport Beachfront Hotel, 1600 East Beach Boulevard, Gulfport, MS, on May 21, 2013. The scoping meeting will begin with an informal open house from 5:30 p.m. to 6:30 p.m. followed by a formal presentation of the proposed permit action and modifications. Comments will be accepted following the formal presentation until 8:00 p.m. Displays and other forms of information about the proposed action and modifications will be available, and the USACE, the MSPA and the MDA personnel will be present at the informal session to discuss the proposed project and modifications and the EIS Process. The USACE invites comments on the proposed scope and content of the EIS from all interested parties. Verbal or written comments will be taken at the scoping meeting following the formal presentation until 8:00 p.m. A time limit will be imposed on verbal comments, as necessary. If hearing impaired or language translation services are needed, please contact Damon M. Young, P.G., at the USACE at (251) 694–3781, at *port.gulfporteis@usace.army.mil*, or at the street address provided above.

9. *Draft EIS:* It is anticipated that a Draft EIS will be made available for public review in early calendar year 2014. A public hearing will be held during the public comment period for the Draft EIS.

Approved By:
Craig J. Litteken,
Chief, Regulatory Division.
[FR Doc. 2013–11038 Filed 5–8–13; 8:45 am]
BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.
ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Navy is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 10, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

**Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, HEAD, FOIA/Privacy Act Policy Branch, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2013.
Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

N05100–3

Safety Equipment Needs, Issues, Authorizations (May 9, 2003, 68 FR 24959).

REASON:

Records are covered under NM05100–5, Enterprise Safety Applications Management Systems (ESAMS) (March 25, 2011, 76 FR 16739); therefore, N05100–3, Safety Equipment Needs, Issues, Authorizations can be deleted.

[FR Doc. 2013–10984 Filed 5–8–13; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Traumatic Brain Injury Model Systems Centers Collaborative Research Project

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.
ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects—Traumatic Brain Injury Model Systems Centers Collaborative Research Projects; Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–7.

DATES:

Applications Available: May 9, 2013.

Date of Pre-Application Meeting: May 30, 2013.

Deadline for Transmittal of Applications: July 8, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of NIDRR's DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: This notice contains two absolute priorities for this competition. Priority 1, the *DRRP Priority for the Traumatic Brain Injury Model Systems Centers Collaborative Research Projects* is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. Priority 2, the *General DRRP Requirements* priority, which applies to DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472).

Absolute Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under

34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Priority 1—DRRP for the Traumatic Brain Injury Model Systems Centers Collaborative Research Projects

Note: The full text of this priority is included in the notice of final priority published in this issue of the **Federal Register** and in the application package for this competition.

Priority 2—General Disability and Rehabilitation Research Projects (DRRP) Requirements

Note: The full text of this priority is included in the notice of final priority published in the **Federal Register** on April 28, 2006 (71 FR 25472), and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $600,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 and any subsequent year from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133A–7.

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 program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- 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.

The recommended 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).

3. *Submission Dates and Times:*

Applications Available: May 9, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 30, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: July 8, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application

remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for a grant under the Traumatic Brain Injury Model Systems Centers Collaborative Research Projects DRRP program, CFDA Number 84.133A–7, 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 Traumatic Brain Injury Model Systems Centers Collaborative Research Projects DRRP program 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 84.133, not 84.133A).

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 program 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 (a Department-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 prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133A–7), 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 84.133A–7), LBJ Basement Level 1, 400 Maryland Avenue SW., 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 program 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 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires

various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

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 6, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11077 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers—Employment of Individuals with Physical Disabilities, Health and Function of Individuals with Intellectual and Developmental

Disabilities, and Community Living and Participation for Individuals with Intellectual and Developmental Disabilities.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133B–4, 84.133B–5, and 84.133B–6.

Note: This notice invites applications for three separate competitions. For funding and other key information for each of the three competitions, see the chart in the *Award Information* section of this notice.

DATES:

Applications Available: May 9, 2013.

Date of Pre-Application Meeting: May 30, 2013.

Deadline for Notice of Intent to Apply: June 13, 2013.

Deadline for Transmittal of Applications: July 8, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established four separate priorities for the three competitions announced in this notice. The General RRTC Requirements priority, which applies to all RRTC competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The remaining three priorities are from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet both the General RRTC Requirements priority and the absolute priority designated for that competition.

These priorities are:

Absolute priority	Corresponding competition CFDA No.
General RRTC Requirements	84.133B–4, 84.133B–5, 84.133B–6.
Employment of Individuals with Physical Disabilities	84.133B–4.
Health and Function of Individuals with Intellectual and Developmental Disabilities	84.133B–5.
Community Living and Participation for Individuals with Intellectual and Developmental Disabilities	84.133B–6.

Note: The full text of the General RRTC Requirements priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the applicable application package. The full text of the remaining priorities is included in the notice of final priorities published elsewhere in this issue of the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: See chart.

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 chart.

Project Period: See chart below.

CFDA No. and name	Applications available	Deadline for transmittal of applications	Estimated available funds [1]	Estimated average size of awards	Estimated range of awards	Estimated number of awards	Maximum award amount (per year) [2] [3]	Project period (months)
84.133B–4 Employment of Individuals with Physical Disabilities	5/9/2013	7/8/2013	$875,000	$872,500	$870,000–$875,000	1	$875,000	60
84.133B–5 Health and Function of Individuals with Intellectual and Developmental Disabilities	5/9/2013	7/8/2013	875,000	872,500	870,000–875,000	1	875,000	60

CFDA No. and name	Applications available	Deadline for transmittal of applications	Estimated available funds [1]	Estimated average size of awards	Estimated range of awards	Estimated number of awards	Maximum award amount (per year) [2,3]	Project period (months)
84.133B–6 Community Living and Participation for Individuals with Intellectual and Developmental Disabilities	5/9/2013	7/8/2013	875,000	872,500	870,000–875,000	1	875,000	60

[1] Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 or in subsequent years from the list of unfunded applicants from this competition.

[2] We will reject any application that proposes a budget exceeding the maximum award amount 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**.

[3] The maximum award amount includes both direct and indirect costs.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133B–4; 84.133B–5; or 84.133B–6.

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 each competition announced in this notice.

Notice of Intent to Apply: Due to the broad nature of the priorities in these competitions, and to assist with the selection of reviewers for these competitions, NIDRR is requesting all potential applicants to submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of an LOI is not a prerequisite for eligibility to submit an application.

NIDRR will accept the optional LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by June 13, 2013. The LOI must be sent to: Marlene Spencer, U.S. Department of Education, 550 12th Street SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202; or by email to: *marlene.spencer@ed.gov.*

For further information regarding the LOI submission process, contact Marlene Spencer at (202) 245–7532. 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. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- 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.

The recommended 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).

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: May 9, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 30, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the

person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Notice of Intent To Apply: June 13, 2013.

Deadline for Transmittal of Applications: July 8, 2013.

Applications for grants under the competitions announced in this notice 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 the competitions announced in this notice 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 RRTC competitions (CFDA Numbers 84.133B–4, 84.133B–5, and 84.133B–6) 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 an electronic grant application for the RRTC competitions (CFDA Numbers 84.133B–4, 84.133B–5, and 84.133B–6) at *www.Grants.gov.* You must search for the downloadable application package for the applicable competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

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 the competition to which you are applying 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 (a Department-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 prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–4, 84.133B–5, or 84.133B–6), 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 84.133B–4, 84.133B–5, or 84.133B–6), LBJ Basement Level 1, 400 Maryland Avenue SW., 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 program 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 the competitions announced in this notice are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html*.

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

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 6, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11085 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Rehabilitation Services Administration—Centers for Independent Living

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

Rehabilitation Services Administration—Centers for Independent Living

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.132A.

Dates:

Applications Available: May 9, 2013.

Deadline for Transmittal of Applications: June 10, 2013.

Deadline for Intergovernmental Review: August 7, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Centers for Independent Living program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of part C of title VII of the Rehabilitation Act of 1973, as amended (Act), consistent with the design included in the State plan for establishing a statewide network of centers.

Program Authority: 29 U.S.C. 796f–1.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $234,667.

Estimated Number of Awards: 2.

States and outlying areas	Estimated available funds	Estimated number of awards
American Samoa	$154,046	1
Maryland	80,621	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible for funding, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center; and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and Outlying Areas listed under *Estimated Number of Awards;* and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or Outlying Area whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* 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 package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A.

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 team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: May 9, 2013.

Deadline for Transmittal of Applications: June 10, 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: August 7, 2013.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34

CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* 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 Centers for Independent Living Program, CFDA Number 84.132A, 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 Centers for Independent Living competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.132, not 84.132A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Timothy Beatty, U.S. Department of Education, 400 Maryland Avenue SW., Room 5057, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7593.

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 84.132A) 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 84.132A) 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 competition are from 34 CFR 366.27 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).

Additional factors we consider in selecting an application for an award are comments regarding the application, if

any, by the Statewide Independent Living Council in the State in which the applicant is located (see 34 CFR 366.25).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR part 74; 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:* Pursuant to the Government Performance and Results Act of 1993 (GPRA), the Department measures outcomes in the following three areas to evaluate the overall effectiveness of projects funded under this competition: (1) The effectiveness of individual services in enabling consumers to access previously unavailable transportation, appropriate accommodations to receive health care services, and/or assistive technology resulting in increased independence in at least one significant life area; (2) the effectiveness of individual services designed to help consumers move out of institutions and into community-based settings; and (3) the extent to which projects are participating in community activities to expand access to transportation, health care, assistive technology, and housing for individuals with disabilities in their communities. Grantees will be required to report annually on the percentage of their consumers who achieve their individual goals in the first two areas and on the percentage of their staff, board members, and consumers involved in community activities related to the third area.

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: Timothy Beatty, U.S. Department of Education, 400 Maryland Avenue SW., Room 5057, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6156.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer disc) by contacting the Grants and Contracts Service 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 6, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11084 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Evaluation of Response to Intervention Practices for Elementary School Reading

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "Evaluation of Response to Intervention Practices for Elementary School Reading" (18–13–30). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation as part of the congressionally mandated national assessment of the Individuals with Disabilities Education Act (IDEA). It is being conducted under a contract that IES awarded in March 2008.

The central research questions that the study will address are:

(1) What is the average impact on academic achievement of providing intensive secondary reading interventions to elementary school children who have been identified as at risk for reading difficulties compared with children just above the cutoff point for providing intervention?

(2) How do academic outcomes, including reading achievement and special education identification, vary with elementary schools' adoption of Response to Intervention practices for early grade reading?

(3) How do Response to Intervention practices for early grade reading vary across elementary schools, and how are they related to academic outcomes?

The information contained in the records maintained in this system will be used for statistical purposes. The system will contain records on approximately 31,076 students in first through third grade, 1,460 teachers, and 1,606 reading interventionists in 146 elementary schools in 13 states.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before June 10, 2013.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the individual delegated the authority to perform the functions and duties of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 6, 2013. This system of records will become effective at the later of (1) the expiration of the 40-day period for OMB review on June 5, 2013, unless OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) June 10, 2013, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Audrey Pendleton, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7078. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*.

You must include the phrase "Evaluation of Response to Intervention Practices for Elementary School Reading" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the Department in room 502D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Audrey Pendleton. Telephone: (202) 208–7078. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record," and the system, whether manual or computer based, is called a "system of records."

Whenever the agency publishes a new system of records or makes a significant change to an established system of records, the Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register.** Each agency is also required to send copies of the report to the Administrator of the Office of Information and Regulatory Affairs at OMB, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Oversight and Government Reform. These reports are included to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

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 6, 2013.

John Q. Easton,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences (Director), U.S. Department of Education, publishes a notice of a new system of records to read as follows:

SYSTEM NUMBER:

18–13–30

SYSTEM NAME:

Evaluation of Response to Intervention Practices for Elementary School Reading.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education (Department),

555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001.

(2) MDRC, 19th Floor, 16 E. 34th Street, New York, NY 10016–4326 (contractor).

(3) Survey Research Management, 4909 Nautilus Court North, Suite 220, Boulder, CO 80301–3692 (subcontractor).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will contain records on approximately 31,076 students in first through third grade, 1,460 teachers, and 1,606 reading interventionists in 146 elementary schools in 13 states.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include personally identifying information about students in elementary schools that have agreed to participate in the evaluation. This information will include: Name; birth date; demographic information such as race, ethnicity, gender, age, and eligibility for free or reduced price lunches; English Learner status; grade level; receipt of reading instruction and interventions; special education status and disability category; and scores on reading achievement tests. In addition, the system will include personally identifying information about reading teachers and reading interventionists within participating elementary schools, including names, educational attainment, teaching experience, training, and instructional practices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This evaluation is authorized under Section 664 of Part D of the Individuals with Disabilities Education Act, 20 U.S.C. 1464 (IDEA).

PURPOSE(S):

The information contained in the records maintained in this system will be used for statistical purposes to evaluate the implementation and effectiveness of Response to Intervention practices and related coordinated early intervening services authorized under the IDEA. This information will also help school districts and school administrators design and implement more effective Response to Intervention programs. The central research questions that the study will address are:

(1) What is the average impact on academic achievement of providing intensive secondary reading interventions to elementary school children who have been identified as at risk for reading difficulties compared with children just above the cutoff point for providing intervention?

(2) How do academic outcomes, including reading achievement and special education identification, vary with elementary schools' adoption of Response to Intervention practices for early grade reading?

(3) How do Response to Intervention practices for early grade reading vary across elementary schools, and how are they related to academic outcomes?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must comply with the requirements of section 183 of the Education Sciences Reform Act, 20 U.S.C. 9573 (ESRA), which provides confidentiality standards that apply to all collection, reporting, and publication of data by IES.

(1) *Research Disclosure.* The Director of IES may license de-identified confidential information from this system of records to qualified external researchers solely for the purpose of carrying out specific research that is compatible with the purpose of this system of records. The researcher shall be required to maintain safeguards with respect to such records under the Privacy Act and the ESRA. The researcher shall be required to maintain the confidentiality of the licensed data and use it only for statistical purposes. All licensing will be accomplished pursuant to the National Center for Education Statistics Licensing Program, described in the following Web site: *http://nces.ed.gov/statprog/instruct.asp.* When personally identifiable information from a student's education records will be disclosed to the researcher under the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (FERPA), the researcher also shall be required to comply with the requirements in the applicable FERPA exception to consent, such as a written agreement between the researcher and IES pursuant to the written agreement requirements under FERPA.

(2) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to the contractor's employees, the Department may disclose the records to those employees who have received the appropriate level of security clearance from the Department. Before entering into such a contract, the Department will require the contractor to establish and maintain the safeguards required under the Privacy Act (5 U.S.C. 552a(m)) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor (MDRC) and subcontractor (Survey Research Management) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish a similar set of procedures at their sites to ensure confidentiality of data. The contractor and subcontractor are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry.

Physical security of electronic data will also be maintained. Security features that protect project data include: password-protected accounts that authorize users to use the contractor's and subcontractor's systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The Department's, contractor's, and subcontractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the Privacy Act and the confidentiality standards in section 183 of the ESRA, which provides criminal penalties for violations.

RETENTION AND DISPOSAL:

These records are covered by a draft records schedule under development, ED 231 Research and Statistics Records. This schedule shall be submitted to NARA for review and approval when complete. Until such time as it is approved by NARA, no records shall be destroyed.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you or your child in the system of records, contact the system manager at the address listed under .

SYSTEM MANAGER AND ADDRESS:

Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your or your child's record in the system of records, contact the system manager at the address listed under SYSTEM MANAGER AND ADDRESS. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you or your child in the system of records, contact the system manager at the address listed under SYSTEM MANAGER AND ADDRESS. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity, specification of the particular record you are seeking to have changed, and the written justification for making such a change.

RECORD SOURCE CATEGORIES:

This system will contain records on students, teachers, and reading interventionists participating in the Evaluation of Response to Intervention Practices for Elementary School Reading. Data will be obtained through student records maintained by the school districts, assessments administered to students, and surveys of teachers and reading interventionists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–11062 Filed 5–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Call for Nominations for Appointment to the Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: This notice constitutes an open call to the public to submit nominations for membership on the Environmental Management Advisory Board.

DATES: Nominations will be accepted through May 31, 2013.

ADDRESSES: Environmental Management Advisory Board (EM–3.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Kristen G. Ellis, Designated Federal Officer, EMAB (EM–3.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or email: *kristen.ellis@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy's (DOE) Office of Environmental Management is accepting nominations through May 31, 2013, to fill vacancies on its Environmental Management Advisory Board (EMAB or Board). Applicants with expertise in project management, acquisition management, human capital management, environmental management and engineering, or other related fields are preferred; this expertise may be drawn from service in the private sector, academia, research institutions, or professional organizations.

The mission of the Office of Environmental Management is to complete the safe cleanup of the environmental legacy brought about from five decades of nuclear weapons development and government-sponsored nuclear energy research. EMAB provides advice to the Assistant Secretary for the Office of Environmental Management on a broad range of programmatic issues, including project management and oversight, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies. The Board is comprised of up to 15 members, who are appointed by the Secretary of Energy as special Government employees or as representatives of entities including, among others, research facilities, academic institutions, regulatory entities, and stakeholder organizations, should the Board's tasks requires such representation.

EMAB meets the criteria for, and is subject to the Federal Advisory Committee Act (FACA), Title 5, Appendix of the United States Code. Members are selected in accordance with FACA requirements and serve on an uncompensated, volunteer basis. However, members may be reimbursed in accordance with the Federal Travel Regulations for per diem and travel expenses incurred while attending Board meetings.

Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominations must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current occupation, position, address and daytime telephone number. Nominations can be sent by U.S. Mail or electronically to Ms. Kristen G. Ellis, Designated Federal Official, at the address above. For further information on EMAB, please visit *http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab* or contact Ms. Ellis directly.

Issued at Washington, DC, on May 3, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–11016 Filed 5–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 14, 2013, 9:00 a.m.–5:00 p.m.

ADDRESSES: DoubleTree by Hilton Hotel Augusta, 2651 Perimeter Parkway, Augusta, Georgia 30909.

FOR FURTHER INFORMATION CONTACT: Kristen G. Ellis, Designated Federal Officer, EMAB (EM–3.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or email: *kristen.ellis@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics

- EM Program Update
- Updates on EMAB Fiscal Year 2013 Work Plan Assignments
  - —Science and Technology
  - —Risk and Risk Communications
  - —Acquisition and Project Management
  - —Management Excellence
- Update on Status of Tank Waste Subcommittee Recommendations

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen G. Ellis at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Kristen G. Ellis at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen G. Ellis at the address or phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab*.

Issued at Washington, DC, on May 3, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–11015 Filed 5–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12686–004]

Baker County Oregon; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12686–004.

c. *Date Filed:* April 30, 2013.

d. *Applicant:* Baker County, Oregon (Baker County).

e. *Name of Project:* Mason Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on the Powder River, at the existing U.S. Bureau of Reclamation's (Reclamation) Mason Dam, near Baker City, in Baker County, Oregon. The project would occupy 6.4 acres of federal land managed by Reclamation and the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Fred Warner Jr., Baker County Board of Commissioners Chairman, 1995 Third Street, Baker City, OR 97814, (541) 523–8200.

i. *FERC Contact:* Kenneth Hogan at *Kenneth.Hogan@ferc.gov* or (202) 502–8434.

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The proposed project facilities include: (1) A 6-foot diameter, 105-foot-long steel penstock; (2) a 40-foot by 28-foot powerhouse containing a single horizontal shaft Francis turbine with an installed capacity of 3.4 megawatts; (3) an approximately 0.8-mile-long, 12.47-kilovolt (kV) overhead transmission line along Black Mountain Road; (4) a substation at the interconnection point with an existing Idaho Power Company 138-kV transmission line; and (5) appurtenant facilities.

The proposed project's generation would not change the current day-to-day operation of Mason dam but would operate utilizing flood control, irrigation, and instream flow releases from Mason dam and established under existing agreements between the Reclamation, the U.S. Army Corps of Engineers, and/or the Baker Valley Irrigation District. Generation flow discharge would be delivered to the Powder River at the base of Mason dam in the vicinity of the exiting discharge via the project's tailrace.

Baker County estimates that the average annual generation would be about 7,510 megawatt-hours.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 1, 2013.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 28, 2013.
Commission issues Draft EA	February 24, 2014.
Comments on Draft EA	March 26, 2014.
Modified Terms and Conditions	April 25, 2014.
Commission Issues Final EA or EIS	July 24, 2014.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11047 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 487–104]

PPL Holtwood, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 487–104.

c. *Date Filed:* April 2, 2013.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project.

f. *Location:* Wallenpaupack Creek and the Lackawaxen River in Pike and Wayne Counties, borough of Hawley, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact*: Heather L. Hopkins, Lake Wallenpaupack Policy Supervisor, PPL Holtwood, LLC, 126 PPL Drive, P.O. Box 122, Hawley, PA 18428–0122 (570) 253–7077.

i. *FERC Contact:* Mary Karwoski, (202) 502–6543, or email: *mary.karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 3, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–487–104) on any comments or motions filed.

k. *Description of Application:* PPL Holtwood, LLC requests Commission approval to grant Woodlyn Shores Association, Inc. a permit to use project lands and waters for the expansion of an existing boat dock by adding capacity for 10 watercraft (wave-runner type). The proposed expansion will utilize existing dock space and add a six foot section to the shore side of the dock, extending the overall dock to its previously licensed length of 225 feet. To accommodate the additional length, the existing 12-foot shore side ramp will be replaced with a 20-foot ramp. The ladder on the existing swim dock immediately to the north will be relocated to the opposite side and a safety fence and signage will be installed on the swim dock to move swimmers away from the boat dock.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–487) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervener must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11046 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–836–000.
Applicants: Southern Natural Gas Company, LLC.
Description: Map Update—2013 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5041.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–837–000.
Applicants: Texas Gas Transmission, LLC.
Description: Implement PAL and HOT on Laterals to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5047.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–838–000.
Applicants: WBI Energy Transmission, Inc.
Description: 2013 System Maps to be effective 4/30/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5079.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–839–000.
Applicants: ANR Pipeline Company.
Description: Cashout Surcharge 2013 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5084.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–840–000.
Applicants: Northern Natural Gas Company.
Description: 20130430 Negotiated Rate to be effective 5/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5085.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–841–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: New Service Agreement to be effective 5/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5129.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–842–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Update Non-Conforming List to be effective 5/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5131.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–843–000.
Applicants: Golden Pass Pipeline LLC.
Description: 2013 Annual Operational Purchases and Sales Report.
Filed Date: 4/30/13.
Accession Number: 20130430–5143.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–844–000.
Applicants: Natural Gas Pipeline Company of America.
Description: EOG Negotiated Rate Filing to be effective 5/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5144.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–845–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger 2013—System Map Filing to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5152.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–846–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Fuel Tracking Filing to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5163.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–847–000.
Applicants: Black Marlin Pipeline Company.
Description: Annual Cash-Out Report of Black Marlin Pipeline Company.
Filed Date: 4/30/13.
Accession Number: 20130430–5187.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–848–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.
Description: CPG Annual Fuel and L&U Filing to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5219.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–849–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Brooklyn Union April 2013 Releases to be effective 5/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5246.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–850–000.
Applicants: Discovery Gas Transmission LLC.
Description: System Map Update to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5275.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–851–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: FEP 2013 Semi-Annual Fuel Filing 4/30/13 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5297.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–852–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Section 4 Tariff System Map to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5309.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–853–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—System Map Update to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5311.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–854–000.
Applicants: Dominion Cove Point LNG, LP.
Description: DCP—System Map Update to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5314.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–855–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Map Filing on 4–30–13 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5340.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–856–000.
Applicants: Trunkline Gas Company, LLC.
Description: Map Filing on 4–30–13 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5346.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–857–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Map Filing on 4–30–13 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5350.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–858–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: Map Update to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5379.
Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–859–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger 2013 Semi-Annual Fuel Filing 4/30/2013 to be effective 6/1/2013.
Filed Date: 4/30/13.
Accession Number: 20130430–5456.

Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–860–000.

Applicants: Golden Pass Pipeline LLC.

Description: 2013 Annual Retainage Rate Adjustment to be effective 6/1/2013.

Filed Date: 4/30/13.

Accession Number: 20130430–5478.

Comments Due: 5 p.m. ET 5/13/13.

Docket Numbers: RP13–861–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Rate Schedule FTB Original Filing of Sheet-based to Section-based to be effective 5/1/2013.

Filed Date: 4/30/13.

Accession Number: 20130430–5488.

Comments Due: 5 p.m. ET 5/13/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated May 1, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–11008 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–889–000]

Mountaineer Gas Company v. Washington Gas Light Company: Notice of Complaint

Take notice that on April 30, 2013, Mountaineer Gas Company (Mountaineer or Complainant) filed a complaint against Washington Gas Light Company (WGL or Respondent), pursuant to the Natural Gas Act (NGA), 15 U.S.C. 717–717z, and Rule 206, 18 CFR 385.206, of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, alleging that the WGL is charging Mountaineer increased rates for lost and unaccounted for (LAUF) gas that have not been approved or otherwise ruled upon by the Commission in Docket Nos. PR13–6 and PR13–7. Complainant alleges that WGL's unauthorized LAUF percentage increase violates the procedural requirements of section 4 of the NGA, is inconsistent with the Commission's established processing for WGL's LAUF applications, and is inconsistent with the terms of the parties' transportation agreement and WGL's tariff.

Mountaineer Gas Company certifies that copies of the complaint were served on the contacts of Washington Gas Light Company as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 20, 2013.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11041 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1407–000]

CCFC Sutter Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CCFC Sutter Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public

Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11045 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1403–000]

Dominion Bridgeport Fuel Cell, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Dominion Bridgeport Fuel Cell, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11043 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1406–000]

Osprey Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Osprey Energy Center, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11044 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1401–000]

Westbrook Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Westbrook Energy Center, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11042 Filed 5–8–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–OAR–2012–0452; FRL–9811–1]

EPA Activities To Promote Environmental Justice in the Permit Application Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of regional actions to promote public participation in the permitting process and promising practices for permit applicants seeking EPA-issued permits.

SUMMARY: As part of its ongoing efforts under Plan EJ 2014 to integrate environmental justice into all of its programs, the Environmental Protection Agency (EPA) is publishing *Actions that EPA Regional Offices Are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities* and *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities*. This notice responds to comments on the proposals issued for public comment in June 2012. These documents reflect suggestions and input received by EPA from numerous stakeholders. This notice describes actions that EPA regional offices are taking when issuing EPA permits to promote greater participation in the permitting process by communities that have historically been underrepresented in that process. This notice also describes promising practices for permit applicants that are designed to encourage and assist permit applicants to reach out to neighboring communities when applying for permits that may affect communities' quality of life, including their health and environment.

FOR FURTHER INFORMATION CONTACT: For more information on this **Federal Register** notice, contact Shani Harmon, Office of Air and Radiation, Mail Code 6102A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–1617, *ejpermitting@epa.gov*.

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I. General Information

Expanding the conversation on environmentalism and working for environmental justice are top priorities of the Environmental Protection Agency (EPA). In 2011, EPA published Plan EJ 2014, the Agency's overarching strategy for advancing environmental justice. The Plan has three goals:

1. Protect health and the environment in overburdened communities;

2. Empower communities to take action to improve their health and environment; and

3. Establish partnerships with local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.

The year 2014 marks the 20th anniversary of the signing of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. That Executive Order directs each covered federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities." Plan EJ 2014 is EPA's roadmap for integrating environmental justice into its programs, policies and activities. One focus area of the Plan is "Considering Environmental Justice in Permitting." Environmental permits often contain measures to mitigate pollution from a source. Therefore, environmental permits play a key role in providing effective protection of public health and the environment in communities. For this reason, Plan EJ 2014 calls upon EPA to: (1) Enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits; and (2) take steps to meaningfully address environmental justice issues in the permitting process for EPA-issued permits to the greatest extent practicable.

In this notice, EPA focuses on enhancing the opportunity and ability of overburdened communities to participate in the permitting process. Plan EJ 2014 uses the term "overburdened" to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of both negative and lack of positive environmental, health, economic, or social conditions within these populations or communities. EPA believes that the participation of overburdened communities in EPA's permitting process is an important step toward the ultimate goal of promoting environmental justice through the permitting process. EPA realizes that enhanced public engagement is only one aspect of addressing environmental justice in the context of permitting. As part of the Plan EJ 2014 initiative, EPA also intends to enhance its analysis of environmental justice impacts associated with permits and identify additional measures that can be

incorporated into permits to address environmental justice issues.

Following the National Environmental Justice Advisory Council (NEJAC) recommendation to encourage more public participation in the permitting decision-making process, EPA has identified actions that EPA and permit applicants, both for new and renewed permits, can take to reduce barriers to participation in the permitting process. In overburdened communities, these barriers can include lack of trust, lack of awareness or information, lack of ability to participate in traditional public outreach opportunities, language barriers, and limited access to technical and legal resources. More transparency and dialogue can to lead to more meaningful engagement of overburdened communities in the permitting process. More meaningful engagement, in turn, can lead to better permit outcomes for communities as well as permit applicants.

Both EPA regional offices and permit applicants can—and in some cases already do—bring overburdened communities into the permitting process through special outreach efforts. To learn more about how EPA and permit applicants can involve overburdened communities in the permitting process for EPA-issued permits, EPA launched an extensive outreach effort to solicit diverse stakeholder views. EPA conducted numerous listening sessions, conference calls and meetings with a variety of stakeholders, including environmental justice stakeholders, members of the business community, state, local and tribal governments and communities, non-governmental organizations, and the NEJAC, to gather input on how to enhance participation of overburdened communities in EPA's process of issuing permits. EPA also surveyed its regional offices, where EPA permitting activity predominantly occurs, to determine what steps are currently being taken or could be taken to meaningfully involve overburdened communities in the permitting process. On June 26, 2012, EPA proposed *Actions that EPA Regional Offices Are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities* and *Draft Best Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities* (77 FR 38051).

In addition to soliciting comment on these ideas (Docket Number EPA–HQ–OAR–2012–0452), EPA continued its collaboration and dialogue with stakeholders to obtain feedback on its proposals. EPA hosted several informational calls with stakeholders to explain the proposals, answer any questions, and gather input on the content of its proposals. Under the *EPA Policy on Consultation and Coordination with Indian Tribes,* EPA conducted a national consultation with federally recognized tribes. EPA also presented its proposed ideas during the NEJAC's public meeting on July 24–25, 2012. Listening sessions, dialogues and numerous comments provided invaluable stakeholder feedback from communities, states, municipalities, tribes, businesses, environmental groups, trade associations, and federal advisory committees.

EPA appreciates the commitment of time and resources from the numerous stakeholders who provided feedback. EPA has considered all the comments and questions it received. EPA has revised the draft proposals and is now issuing two documents. The first is *Actions that EPA Regional Offices Are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities* (hereafter referred to as "*EPA Actions*"). The second document is *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities* (hereafter referred to as "*Promising Practices*"). In today's notice, EPA incorporates some suggestions and addresses several issues raised during public outreach on the proposals. In addition, EPA has provided a Frequently Asked Questions document responding to many of the questions and issues raised in public engagement. The Frequently Asked Questions document is available at *http://www.epa.gov/environmentaljustice/plan-ej/permitting.html.* EPA expects to revise that document over time.

II. Overview

Executive Order 12898 and Plan EJ 2014 direct EPA to make achieving environmental justice part of its mission and to be a leader among federal departments and agencies in addressing the impacts of federal activities on overburdened communities. EPA believes that EPA's permitting process presents opportunities to address environmental justice. EPA further believes that it has the responsibility to lead by example by addressing environmental justice in its permits. Therefore, the actions described in this notice focus exclusively on EPA-issued permits.

Several commenters asked whether *EPA Actions* and *Promising Practices* change existing regulations and guidance addressing public participation in the permitting process. The answer is no. Although EPA expects these two documents to aid EPA in its implementation of Executive Order 12898 with regard to permitting, *EPA Actions* and *Promising Practices* are not an interpretation of environmental statutes, nor do they add to or change interpretations of statutory obligations regarding permitting contained in existing regulations. They create no legal obligations and in no way change the legal landscape of the EPA permitting process. To the contrary, the only legal requirements applicable to EPA regional offices and permit applicants throughout the permitting process are those contained in the EPA's environmental statutes, implementing regulations, the Administrative Procedure Act, applicable anti-discrimination laws and other applicable statutes and regulations.

EPA is issuing *EPA Actions* to encourage more transparency and consistency in EPA's permitting process with the goal of increasing meaningful engagement of overburdened communities in that process. As some commenters noted, EPA already has a legal obligation to provide opportunities for public involvement in the permitting process. EPA believes, however, that in some circumstances it is appropriate to go beyond the minimum public involvement requirements of statutes and regulations to encourage the participation of communities that will be significantly impacted by a permit but that have historically been underrepresented in the permitting process.

Further, though EPA has discretion to increase the level of public outreach it makes to communities beyond the requirements found in statutes and regulations, EPA's ability to perform outreach is constrained by its resources. EPA developed *EPA Actions* to more effectively target outreach resources for the most meaningful engagement and to provide guidance to its permitting programs in regional and headquarters offices in order to promote consistency and transparency in EPA's permitting outreach planning, and to ensure that enhanced outreach is provided in situations where it may have an impact on permit outcomes. EPA believes that such transparency and consistency aids EPA in making more informed decisions, but also gives notice to the public of EPA's considerations and encourages public engagement in the permitting process.

EPA is issuing *Promising Practices* to encourage permit applicants to strategically plan and conduct enhanced

outreach to overburdened communities in the permitting process. As some commenters noted, EPA has recommended some of the outreach strategies included in *Promising Practices* previously. Nevertheless, EPA believes that it is important to issue *Promising Practices* to encourage greater use of practices, some of which are already employed by permit applicants, that EPA believes can be effectively and beneficially used in the context of permitting and environmental justice.

EPA is not requiring permit applicants to adopt the *Promising Practices*. *Promising Practices* are simply that: Good ideas in the form of suggestions to permit applicants. EPA believes permit applicants may benefit from applying these Promising *Practices*. EPA hopes that when permit applicants practice early and meaningful dialogue with community members, they can help build trust, promote a better understanding in neighboring communities of the facility's environmental impact, and build strong relationships that will lead to better results for both the permit applicant and community. For example, EPA expects the alignment of interests between a permit applicant's interests and those of community members, who can be employees, customers, or investors in the applicant's company, to lead to creative solutions that promote the achievement of mutual economic and environmental goals. EPA also believes that engaging community members upfront and throughout the permitting process can be an effective tool for identifying and addressing (or even avoiding) potential problems, and avoiding delays resulting from concerns being raised late in the permitting process. These and other benefits are discussed in the *Promising Practices*.

Some commenters suggested that EPA should expand the scope of the Environmental Justice in Permitting Initiative beyond EPA-issued permits. EPA recognizes that most permits under its environmental statutes are issued by state, local, and tribal governments, not EPA. EPA believes, however, that the best way to exercise leadership in this particular area is by undertaking these activities itself before requiring state, local and tribal governments to do so. EPA believes permits issued by EPA present valuable opportunities to address environmental justice in the permitting process. EPA intends to discuss its experiences and ideas with these governments as well as with other federal agencies with the goal of learning from its state, local and tribal partners and of promoting similar efforts.

EPA is not discouraging state, local and tribal authorities from adopting elements of *EPA Actions* or *Promising Practices* or other measures that may improve their own or their permit applicants' efforts to engage overburdened communities in their permitting processes. EPA recognizes that some state, local and tribal governments already engage in the kinds of activities described in this notice and have made significant progress in meaningfully involving overburdened communities in the permitting process. EPA believes that state, local and tribal permitting authorities with experience in this area can provide valuable information that will strengthen EPA's efforts. Therefore, EPA invites these authorities to continue to share with EPA ideas and approaches that can ensure the meaningful involvement of overburdened communities in the permitting process and encourage dialogue between permit applicants and communities.

EPA also recognizes that states may have obligations to ensure public participation in the permitting process under EPA regulations governing state programs. As recipients of federal financial assistance, they have affirmative obligations not to discriminate under Title VI of the Civil Rights Act of 1964 and other non-discrimination statutes, EPA regulations at 40 CFR parts 5 and 7, and terms and conditions of their grant awards. This notice does not address or modify those obligations. Please refer to *EPA's Guidance to Environmental Protection Agency Financial Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (69 FR 35602, June 25, 2004) and *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (71 FR 14207, March 21, 2006).

As previously mentioned, considering Environmental Justice in Permitting is one initiative under Plan EJ 2014. The ideas in this notice are meant to complement all of the other tools and resources developed under Plan EJ 2014 and other EPA initiatives to aid communities and EPA permitting authorities in incorporating environmental justice into the permitting process. The tools and resources include: *EJ Legal Tools,* which addresses EPA's legal authority to consider environmental justice; EPA's effort to develop a *nationally consistent screening tool for environmental justice;* EPA's efforts to meaningfully engage local communities and stakeholders in government decisions on land cleanup, emergency preparedness and responses and the management of hazardous substances and wastes through the *Community Engagement Network;* and EPA's collaboration with other federal agencies to improve our community-based actions and assistance and to strengthen the use of *interagency legal tools,* such as the National Environmental Policy Act. These resources supplement information disseminated by *EPA regional offices* about their permit processes and particular permits.

Section III below focuses on activities that EPA regional offices are undertaking to promote meaningful engagement of overburdened communities in the permitting process. Section IV presents promising practices that permit applicants can use to initiate and sustain a dialogue with the neighboring communities that are impacted by the permitted activity.

III. Actions That EPA Regional Offices Are Taking To Promote Meaningful Engagement in the Permitting Process by Overburdened Communities ("EPA Actions")

EPA has identified a number of activities and approaches that can be used to promote greater public involvement of overburdened communities in its permitting processes, particularly for major permitted activities that may significantly impact these communities. Each EPA regional office is developing a regional implementation plan to address meaningful engagement of overburdened communities in their permitting activities. This notice describes the general expectations for the regional plans and presents the framework and specific activities intended to enhance public participation.

EPA expects that each regional office will use the agency-wide guidelines to develop a regional implementation plan that is appropriate for the particular circumstances within that region. The agency-wide guidelines in this notice are designed to promote consistency among regional offices and provide EPA's expectation for a basic regional plan. At the same time, EPA recognizes that each permit and community is different and that each EPA regional office has the insight and experience to develop strategies tailored to the particular communities and needs within that region. Thus, the regional implementation plans reflect a balance between national consistency and regional flexibility. EPA expects these plans to evolve as "living documents"

that are updated periodically to more accurately reflect their experiences or circumstances once the plans are being implemented within the regions.

The activities described in this notice supplement the standard notice-and-comment procedures required by law. Even though not required to do so, EPA promotes the use of these techniques and activities within regional offices because enhanced outreach can help remove some of the barriers that deter overburdened communities from participating in permit processes that affect them and are appropriate in some circumstances. The result could be better public health protection for these communities.

It is important to note the difference between EPA's "meaningful engagement" of tribal *communities* in permitting in the environmental justice context and EPA's government-to-government consultation with federally recognized tribes. Although EPA implements its commitment to environmental justice by engaging tribal communities, organizations, and individuals on issues of environmental and public health protection, the Agency's engagement and consultation with tribal governments arises from EPA's recognition that the federal government has a unique government-to-government relationship with federally recognized tribes. The federal government has a trust responsibility to federally recognized tribes that arises from Indian treaties, statutes, Executive Orders, and the historical relations between the United States and Indian tribes. EPA, like other federal agencies, must act consistent with the federal trust responsibility when taking actions that affect federally recognized tribes. Part of this responsibility includes consulting with tribes and considering their interests when taking actions that may affect them or their resources. EPA will continue to consult with federally recognized tribes on EPA-issued permits that may affect them or their resources.

A. Agency-Wide Guidelines for EPA Regional Offices

The guidelines presented here provide a framework for the regional offices to identify possible actions they can take to promote the meaningful engagement of overburdened communities for priority permits. Specifically, the guidelines for EPA regional offices are designed to: (1) Help regional offices identify which permits to prioritize for enhanced outreach to overburdened communities; and (2) suggest activities the regional offices can undertake to promote greater public involvement in their permitting process.

1. Priority Permits for Enhanced Public Involvement Opportunities

Although any permit action may be an opportunity to enhance the engagement of a community, EPA believes that it is particularly important to provide meaningful engagement opportunities for permitted activities that may have significant public health or environmental impacts on overburdened communities. Robust public outreach and engagement can consume substantial resources among everyone involved. EPA recognizes that its regional offices cannot enhance engagement for every EPA-issued permit and that overburdened communities might not have the same interest in engagement for every permit potentially impacting them. For this reason, EPA will consider prioritizing for enhanced public involvement opportunities those EPA-issued permits associated with activities that may have significant public health or environmental impacts on overburdened communities. These might include new large production facilities or major modifications to existing facilities. However, EPA does not intend to scale back the public involvement opportunities it typically provides in other permits as a result of its efforts to provide enhanced public involvement for priority permits.

To assist the regional offices in identifying priority permits for enhanced outreach, EPA has identified the types of permits that may involve activities with significant public health or environmental impacts. In providing this list, EPA does not intend for its regional offices to enhance engagement opportunities in every instance where one of these permits is at issue. Rather, this list is provided to illustrate the kinds of permit applications or renewals that may involve activities with significant public health or environmental impacts and that may be appropriate for prioritization if those impacts affect overburdened communities. Regional offices may also choose to prioritize permits that are not listed here. Examples of permits that may involve activities with significant public health or environmental impacts can include, but are not limited to, the following:

- Construction permits under the Clean Air Act, especially new major sources (or major modifications of sources) of criteria pollutants;
- Significant Underground Injection Control Program permits under the Safe Drinking Water Act;
- "Major" industrial National Pollutant Discharge Elimination System (NPDES) permits (as defined in 40 CFR 122.2) under the Clean Water Act that are for:

New sources or new dischargers, or

Existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process that results in the discharge of new pollutants, or an increase in production that results in an increased discharge of pollutants;

- "Non-Major" industrial NPDES permits (as defined in 40 CFR 122.2) under the Clean Water Act that are identified by EPA on a national or regional basis as a focus area, for:

New sources or new discharges, or

Existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process that results in the discharge of new pollutants, or an increase in production that results in an increased discharge of pollutants; and

- RCRA permits associated with new combustion facilities or modifications to existing RCRA permits that address new treatment processes or corrective action cleanups involving potential off-site impacts.

Several commenters asked for clarification on how EPA will prioritize permits for enhanced outreach, and whether such prioritization of permits is necessary. EPA believes a prioritization process will help regional offices to focus more thoughtfully on permitted activities that may have significant public health or environmental impacts on overburdened communities and to devote resources to outreach activities that will be most effective in engaging a particular community. EPA believes the prioritization process articulated in the guidelines appropriately takes into account available resources to engage in this work, variability across EPA regions, and variability across different communities. EPA expects the prioritization process to result in a manageable number of permits for which regional offices and communities can apply these guidelines.

EPA recognizes that, as some commenters pointed out, the prioritization process articulated in the guidelines may not provide enough detail to determine which particular permits a regional office will prioritize for enhanced outreach. The guidelines in this notice are intended to establish parameters for regional implementation plans and to provide some national consistency across the plans while maintaining the flexibility of the regional offices to tailor outreach to particular circumstances.

Some commenters asked whether EPA would provide enhanced outreach only if two criteria were met: (1) The

permitted activity is expected to have significant environmental or public health impacts, and (2) the affect community is already overburdened. EPA regional offices have the discretion to use other considerations to prioritize EPA-issued permits for enhanced outreach that do not meet either or both of those criteria. One important consideration would be whether a community has expressed concerns over a permit application or renewal. EPA regional offices may consider prioritizing such permits and may tailor the engagement of neighboring communities in proportion to the actual health or environmental impacts or public concerns expressed over the permitted activity. However, given resource constraints, EPA expects that it will only infrequently provide enhanced outreach for permitted activities in response to public concerns in the absence of information about potential significant public health or environmental impacts. Further, the enhanced outreach activities for a permitted activity that does not have significant public health or environmental impacts will not necessarily be the same as those for a permitted activity that has significant public health or environmental impacts. EPA intends to tailor enhanced outreach to the particular circumstances to most effectively utilize the time and resources of EPA as well as communities and permit applicants. Similarly, EPA may, on occasion, prioritize a permitted activity for enhanced outreach due to its significant impacts even though it does not impact an overburdened community.

In response to comments inquiring whether permits that are not prioritized will receive outreach, EPA emphasizes that EPA will still comply with all applicable public participation requirements established by the relevant statutes and regulations. But EPA-issued permits that are not prioritized for enhanced outreach may not receive the supplemental activities presented below.

2. Regional Offices' Activities To Promote Greater Public Involvement in the Permitting Process

Presented below is a list of activities that EPA regional offices are undertaking at key junctures in the permitting process to promote greater involvement of overburdened communities. The list of activities is intended to identify priority areas of activity and to provide options for activities regions can consider including in the regional implementation plans they develop. Regional offices, therefore, may choose not to implement all of the activities listed below. Similarly, the list of activities is not meant to be comprehensive or exhaustive. Different situations will justify different responses.

Planning & Gathering Information:

- Identify upcoming priority permits for promoting greater public involvement. When identifying priority permits, focus on permits that community members have identified as a priority, to the extent such information is available.
- Locate existing data and studies that are relevant to the particular community.
- Explore ways to reach out to the affected community in coordination with relevant EPA staff, including permit writers, EJ coordinators, public affairs staff, the press office, and EPA's Conflict Prevention & Resolution Center.
- Coordinate with state, local, and/or tribal authorities in appropriate circumstances.
- Evaluate the appropriate length of the public comment period and EPA's openness to requests to extend that period.
- Consider holding information meetings for the public in addition to the formal public comment processes.

Coordinating within EPA:

- For applicants with multiple EPA permits, inform EPA permit writers from other offices in the region that your office has received a permit application from the applicant.

Communicating with Community Members:

- Designate EPA point(s) of contact that community members can contact to discuss environmental justice concerns or questions of a technical nature about the permit application.
- Use informational materials to explain the permitting process.
- Use plain language when communicating with the public.
- Use communication techniques that community members value, such as direct mailings, posters, articles in local newspapers, and emails to list serves.
- Offer translation services for communities with multi-lingual populations (including interpreters at public meetings or translations of public documents).
- Make key documents on the proposed project readily accessible to community members, using a variety of media tools (paper copies, online, etc.), when appropriate.
- Hold public meetings at times and places in neighboring communities best designed to afford the public a meaningful chance to attend.
- Give careful consideration to requests to extend the comment period, or hold additional public meetings.
- After the permit has been issued, make available to community members a summary of EPA's comment responses and provide information on where community members can find the entire comment response document.

Communicating with the Permit Applicant:

- Encourage the permit applicant to provide EPA with a plain-language description of its proposed project or permit application.
- Encourage the permit applicant to consult EPA guidance on environmental justice and other resources developed under Plan EJ 2014, including the *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities.*

Some commenters inquired why EPA does not require all EPA regional offices to perform the same or particular outreach activities. *EPA Actions* strikes an important balance between national consistency and regional flexibility. The Agency-wide guidelines establish national consistency by providing EPA's expectations for the regional implementation plans. At the same time, EPA recognizes that the regional offices need the flexibility to take actions suited to the types of permits and communities typically seen within the region. EPA believes that each regional office has the insight and experience to develop strategies tailored to their particular circumstances. To support this needed regional flexibility, the guidelines do not prescribe which permits the EPA regional offices must prioritize or which outreach activities they must adopt.

B. EPA's Expectations for Regional Implementation Plans

EPA expects each regional office to develop, implement and make publicly available a regional implementation plan consistent with the Agency-wide guidelines presented in this notice in order to support the meaningful engagement of overburdened communities in the permitting process for priority permits. EPA believes that regional offices will be better able to provide enhanced outreach when they have planned and allocated resources for outreach in advance through the development of regional implementation plans. EPA also believes that making the regional implementation plans publicly available will increase transparency and inform communities of EPA regional offices' efforts to create opportunities for

overburdened communities to meaningfully engage in the permitting process. EPA intends for the plans to evolve as "living documents" as the regional offices gain experience with using the plans to guide their outreach efforts in overburdened communities for priority permits.

EPA expects the regional implementation plans to address with more specificity the process that a regional office will use to prioritize permits for enhanced engagement, including the types of permits and activities the regional offices plan to implement. EPA expects the regional plans to be tailored to the region's specific needs but also to be consistent with the Agency-wide guidelines on prioritization of permits for enhanced engagement and priority areas of outreach activities outlined in today's notice.

Consistent with the Agency-wide guidelines previously discussed, EPA expects the regional implementation plans to include:

I. EPA Regional Offices' Process for Prioritizing Permits for Enhanced Engagement

a. Use of a screening tool or other methodology to help identify potentially overburdened communities; and

b. Types of permits with significant public health or environmental impacts.

II. Priority Enhanced Outreach Activities

a. Planning and gathering information;

b. Coordinating within EPA;

c. Communicating with Community Members; and

d. Communicating with the Permit Applicant.

In summary, EPA expects the regional implementation plans to give a general picture of the types of permits that a regional office expects to target for enhanced outreach and what enhanced outreach might entail. Regional implementation plans are intended to inform the public of an EPA regional office's plans to prioritize and conduct enhanced outreach for permits generally. However, the regional implementation plans are not intended to be a prospective or retrospective account of the particular permits a regional office prioritized and specific activities it conducted for enhancing outreach in overburdened communities.

EPA anticipates that the regional implementation plans will be publicly available in Spring 2013. The regional implementation plans will be posted to EPA's Plan EJ 2014 Web site, at *http://www.epa.gov/environmental justice/plan-ej/index.html.* Additionally, each Region will post its regional implementation plan to the appropriate EPA regional Web site.

Under the Agency-wide guidelines for regional implementation plans, EPA regional offices are expected to prioritize permits for enhanced outreach based on the criteria of whether the permitted activities could have significant environmental or public health impacts, and whether those impacts affect an overburdened community. To be prioritized for outreach, a permit will likely need to meet both criteria. However, as previously mentioned, on occasion, EPA regional office may decide to prioritize some EPA-issued permits for enhanced outreach even if they do not meet one or both of the criteria.

When prioritizing a permit for enhanced outreach, an EPA regional office need not assess whether permitted activities have significant environmental or public health impacts prior to investigating whether the permitted activities affect an overburdened community, or vice versa. Thus, EPA expects that some EPA regional offices will examine whether a permitted activity has significant environmental or public health impacts prior to assessing whether an overburdened community would be impacted by the permitted activity while other EPA regional offices might first examine whether an overburdened community would be impacted. Accordingly, if an EPA regional office assesses the significance of the environmental and public health impacts of a permitted activity first, the EPA regional office may decide not to perform an environmental justice screening on every permit application it receives. Instead, the EPA regional office would perform an environmental justice screening only on the permits that have been found to have significant environmental or public health impacts. Consequently, EPA does not expect that EPA regional offices will perform an environmental justice screening on every permit application.

Some commenters asked how EPA regional offices would perform an environmental justice screening of permits. The Agency has developed a nationally consistent screening tool to help identify communities that are potentially overburdened. This tool, known as EJSCREEN, is one of several tools being developed under Plan EJ 2014. EPA anticipates that its regional offices will use EJSCREEN and other readily available information, including known community concerns, to help prioritize their permits for enhanced outreach. In cases where EJSCREEN is not appropriate for use in screening because the relevant data were not available for the area, the region will complete a similar screening by reviewing available demographic and environmental data. EPA expects that in most circumstances EJSCREEN will be the appropriate tool for initial screening. Please visit EPA's Plan EJ 2014 Web site (*http://www.epa.gov/environmental justice/plan-ej/index.html*) to learn more about EJSCREEN.

Other commenters asked how EPA regional offices would determine whether a permitted activity has significant environmental or public health impacts. When permit applicants submit an application, they are required to provide information on the proposed project consistent with the requirements of particular statutes and regulations. EPA may also do its own assessment of the environmental and public health impacts of a proposed project, using modeling and monitoring data for example. All of this information would inform an EPA regional office's decision on whether a permitted activity has significant environmental or public health impacts.

EPA recognizes that a permitted activity could potentially impact an area that straddles two or more EPA regions. The EPA region where the permitted activity is located has the lead for issuing the permit and is expected to apply the prioritization process for enhanced outreach as described in their regional implementation plan. EPA regional offices with the lead for issuing the permit routinely engage other EPA regional offices impacted by the permitted activity to coordinate on analysis and outreach.

Some commenters inquired about the relationship between enhanced outreach and the ultimate permit terms. Specifically, they asked if a prioritized permit for enhanced outreach would be subject to stricter emissions or discharge limits or perhaps denied altogether. In response to this comment, EPA notes that an EPA regional office's decisions on whether to issue a permit and, if so, the conditions to impose within a permit are distinct from the EPA regional office's decision about the outreach it will perform during the permitting process. An EPA regional office's decision on whether to issue a permit and what permit conditions to impose are governed by statute and regulation. Neither *EPA Actions* nor *Promising Practices* affects that. However, enhanced outreach to communities during the permitting process can provide an EPA regional office with information relevant to the EPA regional office's decision to issue a permit, and what conditions to require

should the regional office issue the permit. For example, community involvement in the permitting process might provide EPA information on vulnerable portions of the community. Based on that information, EPA might require additional monitoring or reporting to learn more about how pollution from the permitted activity impacts vulnerable sub-populations, in accordance with applicable laws and regulations.

IV. Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways To Engage Neighboring Communities

For EPA-issued permits, both the permit applicant and the potentially affected community are key stakeholders in the permitting process. Therefore, EPA engaged in extensive outreach to these stakeholders and in particular the business community, on how to meaningfully engage neighboring communities in the permitting process. Business leaders on environmental justice issues shared their experiences and insights with EPA. EPA learned that if a permit applicant engages a community early and maintains that conversation, a partnership can form that facilitates the exchange of information and provides the foundation for dialogue on issues that may arise later during the permitting process.

Such engagement may be especially beneficial with communities that have historically been underrepresented in the permitting process and that potentially bear a disproportionate burden of an area's pollution. EPA learned from its conversations with business stakeholders that dialogue with community members early in the permitting process promotes reasonable expectations among the public and, therefore, more predictable outcomes for the permit applicant. EPA also learned that permit applicants that invest in outreach may avoid the costs of delay, negative publicity among peers and investors, and community distrust resulting from community members objecting to a permit late in the permitting process.

In EPA's view, a facility that believes in environmental stewardship in all its dimensions and that acts consistently with that belief, including accountability to the neighboring community, may achieve more environmental good than any permit can compel. Reducing treatment failures, spills or other incidents becomes a source of organizational pride when facility's successes—including the facility's response and prevention strategies—are publicized within neighboring communities. Transparency and accountability also make good business sense because facilities save energy, devise new technologies, reduce the rate of equipment failures, and develop cleaner products, among other things. This ethic of corporate responsibility can improve the neighboring environment and far beyond. Engaging meaningfully with the local community is another facet of responsible corporate citizenship that achieves environmental results. EPA believes that a partnership with neighboring communities can lead to more informed permits, resulting in better outcomes for the permit applicant as well as neighboring communities that have a stake in the success of the facility.

In order to maximize the benefits of community engagement, and conserve the limited resources of both the permit applicants and the communities for outreach, EPA has identified what it considers to be effective communication practices and strategies that permit applicants can employ to meaningfully involve communities in the permitting process. EPA gathered these practices and strategies from numerous conversations with members of the business community, environmental justice stakeholders, state, local and tribal governments and communities, non-governmental organizations, and the NEJAC. The resulting document, entitled *Promising Practices,* is included in today's notice.

An earlier version of this document described the practices and strategies as "best practices." As several commenters noted, not every practice will be appropriate for every circumstance, as the term "best practices" implies. The term "promising practices" better communicates EPA's desire to encourage permit applicants to use and tailor these effective outreach practices in appropriate situations.

The promising practices are designed to foster leadership among permit applicants operating, or proposing to operate, facilities in overburdened communities. EPA hopes that these promising practices will inform businesses and other participants in the permitting process of some effective techniques for meaningfully engaging overburdened communities in the permitting process for EPA-issued permits. Though previous EPA regulations, guidance and informational materials may have already highlighted some of these practices as effective outreach tools, EPA believes it is appropriate to emphasize the effectiveness and benefits of employing them in the context of permitting and environmental justice. EPA commends those permit applicants who are already employing promising practices, and encourages other permit applicants to adopt promising practices as appropriate.

The promising practices are meant to complement existing guidance and recommendations issued by permitting authorities, including state and local agencies. The promising practices are not themselves legal requirements and do not modify existing statutory or regulatory requirements for the permitting process for EPA-issued permits. EPA emphasizes that no permit applicant will be required to follow these suggestions. Nor are the promising practices intended to be de facto requirements in the process, as a checklist or otherwise.

V. Conclusion

EPA appreciates the suggestions and comments received in response to its proposals. EPA is issuing the *EPA Actions* to encourage more transparency and consistency in EPA's permitting process with the goal of increasing meaningful engagement of overburdened communities in the permitting process. EPA is issuing *Promising Practices* to encourage permit applicants to similarly strategically plan and conduct enhanced outreach to overburdened communities in the permitting process.

The *EPA Actions* and the *Promising Practices* are not an interpretation of environmental statutes, nor do they add or change interpretations of statutory obligations regarding permitting contained in existing regulations. Throughout the permitting process, EPA regional offices and permit applicants must comply with the relevant public process obligations set forth in the applicable statues and implementing regulations. However, EPA feels that in some circumstances it is appropriate to go beyond the minimum public involvement requirements of statutes and regulations to encourage the participation of communities that will be significantly impacted by a permit but have historically been underrepresented in the permitting process.

Although enhanced engagement of overburdened communities in the permitting process may not necessarily change the permit outcome, EPA believes that meaningful involvement of overburdened communities is a desirable end in and of itself. This is because, in some cases, overburdened communities have significantly been impacted by a permitted activity but

have not been able to access or participate in the permitting process. By expanding a community's participation in the permitting process, EPA can promote their understanding of the permitted activity, acquire important information about their concerns, and foster a community's sense of connection to government and business actions. EPA also believes that enhanced engagement of overburdened communities in the permitting process improves the permitting process generally through more transparency and more consistency. EPA believes that such transparency and consistency aids EPA in making more informed decisions, but also gives notice to the public of EPA's considerations and encourages them to engage EPA in the permitting process generally as well as for specific permits. Additionally, engagement of permit applicants and communities earlier in the permitting process can lead to a more informed permitting process that allows for resolution of issues earlier that could otherwise delay the issuance of a permit. EPA further believes that every time enhanced outreach leads to a feasible solution to an issue of interest to a community, all stakeholders benefit.

Dated: April 30, 2013.

Lisa Garcia,

Senior Advisor to the Administrator for Environmental Justice.

Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways To Engage Neighboring Communities

I. Introduction

Achieving environmental justice is an integral part of EPA's mission to protect human health and the environment. One way EPA promotes environmental justice is to ensure that individuals in all parts of society have access to information sufficient to help them participate meaningfully in EPA decision-making.

EPA decision-making takes many forms. These promising practices focus on the permitting process, through which EPA authorizes industrial and municipal facilities to release pollutants into the environment at levels intended to meet applicable standards.

By soliciting public comment prior to issuing permits, EPA plays an important role in bringing communities and other members of the public into the permitting conversation. But the best time to begin positive, collaborative dialogue is before the permit is drafted, even before a permit application is filed. And the key players are not EPA but rather permit applicants and members of the neighboring community. Both sets of individuals have a long-term stake in the health of the community and the success of the company or enterprise.

Information is critical at this early stage in the permitting process, and the permit applicant has access to the information that can create a constructive dialogue throughout the permitting process. The permit applicant also has an interest in being a good neighbor to a community. EPA believes that many applicants for EPA-issued permits are already employing practices to be good neighbors. These promising practices are designed to help all permit applicants to apply good neighbor values to the permitting process, with an emphasis on ways to reach out effectively to the neighboring community.

EPA encourages all permit applicants to experiment with these practices; all neighborhoods and communities benefit when a facility reaches out as part of the permitting process. EPA emphasizes neighboring communities because, for the vast majority of permits, communities most proximate to a facility are likely to be the most impacted by a permitting decision. For some permits, however, the communities most impacted by a permitting decision may exist beyond the fence-line. EPA encourages permit applicants for such permits to make efforts to engage the communities that are likely to experience public health or environmental impacts from their permitted activities. These practices also have particular value in overburdened neighborhoods that have been historically underrepresented in the permitting process or may face barriers to participation in the permitting process, such as lack of trust, lack of awareness or information, language barriers, and limited access to technical information and other resources.

EPA hopes that these promising practices—which emerged from EPA's conversations with a host of community, permit applicant and government stakeholders—will help applicants for EPA-issued permits to seize a leadership role in this important area and, in doing so, demonstrate publicly that their statements of core values on their Web sites or elsewhere do indeed influence corporate behavior.

II. The Purpose of Promising Practices

The purpose of these promising practices is to publicize the good neighbor practices already employed by permit applicants across the country and to encourage their greater use. Many of these practices are quite simple. They can help build trust, promote a better understanding in a community of the facility's environmental impacts, foster realistic expectations and help build strong partnerships that lead to better results for all parties. Investing in outreach to communities is a cost-effective strategy. EPA encourages permit applicants to make each of its facilities a good neighbor to the neighboring communities. EPA hopes that the promising practices will help companies think of ways to engage the neighboring communities and, in doing so, become better neighbors.

III. Why is EPA providing promising practices to permit applicants?

Industrial facilities are important members of the communities in which they are located. In addition to their important role as a source of employment and economic stability within a community, facilities play other roles. Many facilities, for example, have robust community engagement strategies that recognize the value of community outreach. Pursuant to these strategies, facilities engage actively with a community through environmental initiatives, neighborhood beautification projects, education programs and charitable giving, civic programs and the arts, youth activities, and other investments in communities. Indeed, many companies and public authorities embody these principles in their mission statements, using words and phrases like collaboration, respect, and mutually beneficial relationships. Some even aspire to measure their own success by the success of their customers, shareholders, employees and communities. In short, a corporate culture has emerged in this Nation that values and actively promotes community partnerships.

EPA recognizes that many permit applicants already practice community outreach. These promising practices are meant to encourage those leaders to continue their efforts and to provide helpful suggestions for those seeking greater direction. EPA also hopes that the practices described here will persuade those who are new to these ideas to experiment with this form of leadership. Indeed, engaging with their communities as described here is consistent with many permit applicants' core values. These principles, practices and values lead to corporate sustainability, stability and—ultimately—profitability.

Early and meaningful dialogue between the permit applicant and a community is especially important in communities that have historically been

underrepresented in the permitting process or that potentially bear a disproportionate burden of an area's pollution. Meaningful dialogue promotes environmental justice. EPA encourages applicants for EPA-issued permits to engage in public outreach to the neighboring communities whenever the facility's pollutant releases have—or are perceived by a community to have—potential health and environmental impacts on overburdened communities. In such cases, the permit applicant has an opportunity to inform the neighboring community about the facility's actual pollutant releases and impacts. Providing specific information about the pollution and related health impacts of a permit action may allay general concerns community members have about the facility or educate it about other sources of exposure. A permit applicant that ignores a neighboring community's concerns about pollution from its facility or general concerns about pollution in the community may experience delays in the permitting process, negative publicity, and community distrust. Employing promising practices can foster a dialogue between the permit applicant and community members to prevent misunderstandings and possibly opposition to the permit. The permit applicant can tailor the engagement of the neighboring community to be proportionate to the actual health and environmental impacts of the facility or the particular concerns of community members. This approach is consistent with EPA's objectives under Plan EJ 2014, which promotes meaningful involvement of an affected community in the permitting process.

EPA believes these promising practices can foster a smoother and faster permitting process. This outcome is in everyone's interest—EPA, permit applicants and communities alike. The permit applicant and EPA have an interest in an efficient permitting process. The permit applicant wants permission to make operational improvements or construct a new facility. The permitting authority wants to efficiently issue a permit that comports with the law and accounts for public comment in addition to protecting human health and the environment. Some communities at the very least wants the assurance that, through appropriate permit terms and conditions, the permit applicant accepts responsibility for appropriately controlling its pollutant releases and keeps a community informed of its control successes (and failures). These interests, while different, do not conflict. Conversations between the permit applicant and community members *before the permit application is filed* can help launch the permit process in a way that achieves all of these interests, with minimum conflict and delay. This could result in a more expeditious permitting process.

Early engagement can also yield a less contentious permitting process. It seems axiomatic that communities generally do not welcome one more source of pollution, especially when the community already feels aggrieved by past siting decisions. But this may not be so self-evident when the new project accelerates a transition to cleaner energy or achieves another important environmental objective with benefits beyond the local community. Early meaningful dialogue can help sort out the interests, encourage a permit applicant to accept responsibility for *its* impacts, and perhaps find low-cost ways valuable to some communities by which the permit applicant can voluntarily mitigate environmental burdens. Community members may be less likely to hold a new project responsible for past unrelated actions if the permit applicant accepts responsibility for its own actions and is willing to help make community life better.

IV. How can a permit applicant enhance its outreach to a neighboring community?

There are many ways that a facility can enhance its outreach to a community. Whatever degree of outreach a facility chooses to employ, the following promising practices are designed to help both the permit applicant and the surrounding communities get a reasonable return on their investment of time, energy and other resources. EPA gathered these ideas from permit applicants that have employed them, but EPA notes that every situation is different. The permit applicant and the affected community are in the best position to determine what engagement strategy is most appropriate for their particular circumstances.

1. Think Ahead

Before deciding whether to undertake special efforts to reach out to the neighboring community regarding a permit application, a permit applicant may want to ask itself the following types of questions. The answers to these questions may help the permit applicant decide what kind of community engagement will be most appropriate under the circumstances.

- What are the geographic boundaries of the neighboring community?
- What are the demographics of the neighboring community?
- Who in the community may be affected by the proposed permit?
- Has the facility successfully worked with the neighboring community in the past?
- Are there other facilities or major pollution sources (e.g., highways, landfills) in the neighboring community? Do community members have a history of engaging with those facilities?
- Would the new permit introduce new or additional pollutants to the neighboring community?
- Is the neighboring community already exposed to pollutants originating from other facilities?
- How will changes at the facility site affect the quality of life in the neighboring community, independent of the pollutants released?
- Is the proposed pollutant release—or associated activity—likely to cause concern among community members?
- If a risk assessment has been performed for the neighboring community, what does it say? What have community members said about it?
- What direction do the permit applicant's published core values offer?

Permit applicants may be required to reach out to a neighboring community before applying for a permit. For example, EPA's Resource Conservation and Recovery Act permitting regulations for hazardous waste treatment, storage, or disposal facilities have such requirements. See 40 CFR 124.31. In most cases, however, the decision on whether to engage in pre-application outreach is committed to the permit applicant's good judgment. (See Section V below for a discussion of the benefits to permit applicants when they engage community members as part of permit applications.) But however a permit applicant chooses to engage the neighboring community, its outreach activities should be proportional to the impact the facility's proposed permitting action would have upon the community. In other words, permitting actions that may have a significant impact on the community may justify more extensive outreach than permits likely to have fewer impacts. Engaging community members early in the permitting process can help a permit applicant gauge the level of outreach appropriate to community member's concerns.

Community assessments can be a useful tool for permit applicants to consider as they develop appropriate outreach strategies for a community.

These assessments can help permit applicants develop a detailed profile of a community and identify any concerns related to the proposed project. They can also provide background information on a community the permit applicant anticipates engaging. Another useful tool is a public participation plan. Public participation plans can vary greatly in the extent of their detail. The purpose of a public participation plan is to aid the permit applicant in organizing its outreach. It can also help convey the facility's outreach strategy to a community.

EPA recognizes that a permit applicant, despite its planning and execution, might not elicit community interest in its project. For example, few people might attend meetings or visit the plant for tours. Before concluding that community members are uninterested in the project, the company may want to explore whether its engagement efforts were sufficiently tailored for the community. If the permit applicant's efforts to engage the community are made in good faith and are sufficiently tailored for community members, this will go a long way toward building trust, even if members of the community ultimately choose not to engage.

2. Engage Community Leaders

An effective way of promoting early and meaningful engagement between a permit applicant and the surrounding community is by creating a community environmental partnership. The key is to assemble the *right* people to be in the partnership. EPA has learned from stakeholders that the first step in meaningful engagement is identifying, working with, and cultivating trusting relationships with community leaders; doing so will then foster effective relationships among the interests they represent and will help identify their common as well as their unique goals.

Community leaders may be elected officials or specialists in local, state or tribal government. Thus, permit applicants may want to engage government officials in the permitting process for EPA-issued permits to take advantage of their knowledge, experience and networks. In some cases, government officials may have already played a role in approving the facility through zoning and siting processes. Thus, these government officials are in the best position to address such concerns with community members. Similarly, government officials may be an excellent source when gathering information about other facilities that impact a community. The following promising practices can help a company create a successful community environmental partnership.

- Find out who the established community leaders are, both elected and unelected.
- On tribal lands, work with the tribal government and other contacts to identify tribal community leaders to commence outreach and assistance to tribal communities.
- Identify people who collectively understand the needs (and aspirations) of *local* stakeholders (permit applicant, community, environmental groups, academic, etc.).
- Recruit stakeholder representatives who have strong interpersonal skills and are willing to:

Seek common interests;

Cultivate trusting relationships.

- Engage with diverse leadership so that many views can be brought into the dialogue. Successful partnerships have a variety of *local* perspectives, including:

Grassroots organizations and leaders;

Faith community leaders;

Tribal government and community representatives;

Academic institutions;

State, county or local governments;

Environmental groups;

Health organizations;

Permittees, including, ideally, the facilities in the neighborhood that engage in activities that generate pollution.

3. Engage Effectively

As is the case with any relationship, predictable and ongoing interactions are key to a strong partnership between a permit applicant and a community. A permit applicant engaging a community early in the permitting process, or even before the formal permitting process begins through pre-application meetings, can lay the foundation for a positive relationship with a community. In addition to early engagement, holding regularly scheduled meetings throughout the permitting process can build on that earlier outreach and ensure continuing communication, further fostering the relationship between community members and permit applicant.

The following promising practices can help the permit applicant engage effectively with community members.

- Foster sustained involvement by the participants; relationships are created between individuals, not the positions they hold.
- If a public participation plan or policy describing outreach activities was developed, make it available to the public as a sign of the permit applicant's intention to engage meaningfully with community members.
- Invite community members and leaders to comment on community outreach plans and processes, and give feedback on what is working and lessons learned.
- Discuss project plans and potential impacts as early in the planning process as possible, even if the permit applicant can speak only in general terms.

If the permit applicant is unsure about potential impacts, it is better to acknowledge this fact; denying the potential for impacts can undermine credibility and trust.

Encourage input from community members on their concerns about particular impacts early in the planning stages.

- Provide progress or status reports.
- Invite members of the community and community leaders for regular tours of the facility, especially when the facility is planning to change a process that might affect the community.
- Consider investing time in public education, e.g., by hosting one- or two-day public information sessions with posters and kiosks dedicated to specific topics, with discussions led by facility personnel who are both familiar with the subject *and* capable of effective discussion with the public (using a conversational tone, not being defensive, using clear and non-technical language, etc.).

4. Communicate Effectively

Permit applicants may need help to determine the most effective and appropriate methods for informing and receiving input from community members. Community leaders can provide this help. For example, they can identify commonly spoken languages and any language barriers or Limited English Proficiency within the neighboring community. They can also help identify which media outlets (radio, newspaper, church bulletins), outreach methods (going door-to-door, using social media, texting, phoning, putting up fliers) and outreach materials (brochures, fact sheets, postcards, letters, web postings) will be most effective in communicating with community members. Community leaders can also help to create more effective opportunities to receive information from the public (individual/small/large/public/private meetings, anonymous hotlines, solicitation of written comments). For some communities, it may be appropriate to consider utilizing collaborative or interactive Web-based information technology (IT) tools, social media, cell phone applications, or other tools to

keep communities informed of activities related to a permitting project. On the other hand, some communities do not have access to the most modern communications tools and permit applicants may need to resort to using local radio stations, CB radio, local newspapers, posters at grocery stores or trading posts, or village/community center/chapter meetings to keep communities informed. Every community is different, so permit applicants that listen to their community's advice and involve the community in their outreach efforts have a greater chance of a successful outcome.

A key component of effective communication is creating an environment for all stakeholders to meaningfully participate in a dialogue. Good ideas, including ideas that are good for the permit applicant, can come from many sources. By meaningfully engaging with a community potentially affected by an environmental permit, a permit applicant may acquire a better sense of a community's true concerns and ways a permit applicant could help alleviate them. Transparency and disclosure of information that may be of interest to a community, such as performance reports, can build trust conducive to meaningful dialogue.

EPA recognizes that both permit applicants and communities have limited resources to engage in dialogue. The following promising practices on fostering two-way communication and collaboration between permit applicants and communities, collected from permit applicants and communities, may help permit applicants communicate more effectively and thus efficiently use their resources.

- Set up a hotline for community members to report a problem or concern about the proposed project.
- Identify a single person within the facility to be the liaison that community members can call with concerns or problems.
- Institute regular meetings among all stakeholders.
- Consider organizing citizen advisory councils or community environmental partnerships.
- Select meeting locations and times that are convenient and comfortable for the community. Follow advice from community leaders to communicate in ways most effective for the community you are trying to reach. Use language and terminology that community members understand, including providing technical data in everyday terms.
- Consider alternate methods of obtaining input for community members who may be interested but unable to attend public meetings (e.g., allow submission of comments and surveys in writing, online, or through a designated point of contact).
- Build in mechanisms for meeting attendees to ask questions, express concerns and propose solutions.
- During the meeting, talk about participants' concerns and questions (rather than simply "taking note" of them).
- Recognize that community members may be concerned about a variety of things—within and outside the permit applicant's control—including matters that do not relate to the permit under discussion (e.g., truck routes, delivery times, etc.).
- Careful listening and an effort to understand the underlying interests behind related and seemingly unrelated complaints might yield a solution that addresses community member's true concerns at a reasonable (or even minimal) cost to the facility.
- Consider using a neutral facilitator to assist in designing an effective public participation process and conduct meetings to encourage all participants (permit applicant and community) to listen effectively, focus on interests rather than initial positions, and to identify potential solutions.

5. Follow Up

Follow-up can be crucial in building a strong partnership with a community. The repeated interaction that follow-up provides can create a predictable pattern of engagement that is conducive to building trust. When a permit applicant delivers on commitments made during meetings (e.g., to provide additional information) a permit applicant demonstrates responsibility, integrity and commitment to the process. The following promising practices can help permit applicants design follow-up activities with communities.

- If the public is invited to comment on plans, discuss the comments with community members after considering them.
- If a comment is not clear, ask for clarification; do not ignore a suggestion due to a lack of understanding.
- Report back to let community members know how their comments affected the permit applicant's planning or operation.
- Explain when comments cannot be incorporated into the permit applicant's planned actions.
- Consider using a good neighborhood agreement to memorialize agreements between permit applicants and communities.
- Make environmental performance records available to community members without being asked, especially regarding pollution matters that are important to some communities.
- Keep the conversation going even after the permit has been issued; maintaining a collaborative relationship with some communites can pay benefits at unexpected times.

Provide opportunities for communities to give feedback on the public engagement strategy, through a formal evaluation or informally through questionnaires, interviews, comment boxes, or debriefs.

Example 1: Using Web and Social Networking Tools to Enhance Communication

The use of web and social networking tools to provide communities with instant and easily understandable information concerning their environment is expanding. For example, EPA collaborated with federal, tribal, state and local partners to develop the AIRNow Web site that provides the public with easy access to national air quality information and offers daily Air Quality Index (AQI) forecasts as well as real-time AQI conditions for over 300 cities across the United States, and provides links to more detailed State and local air quality Web sites. EPA also recently created a new application and Web site called How's My Waterway. This innovative tool helps people find information on the condition of their local waterways using a smart phone, tablet, or desktop computer and makes science-based water quality information accessible and understandable for everyone. In addition to several other features, users can instantly receive a list of waterways within about five miles of the search location where each waterway is identified as unpolluted, polluted, or unassessed, along with the year its condition was reported. A map option offers a view of the search area with the waters color-coded by assessment status. The Regulatory Development and Retrospective Review Tracker (Reg DaRRT) was developed by EPA to provide information to the public on the status of EPA's priority rulemakings and retrospective reviews of existing regulations. This tool allows people to sign up for RSS feeds as an easy way for them to keep up with news and information on a regulatory action that is of particular interest, and helps avoid the conventional methods of browsing or searching for information on websites because the content is delivered directly to the individual. Permit applicants should consider using modern communications technology, if appropriate, to assist in their efforts to reach out to neighboring communities.

Example 2: Alternative Dispute Resolution

The success of pre-application meetings will vary widely depending on the proposed project, the concerns of the community, and the ability of the permit applicant and the community to agree upon potential solutions. Sometimes, conversations between a community and a permit applicant have the potential to be contentious. For such cases, EPA recommends the use of a professional, trained, neutral facilitator to aid in creating and implementing an outreach strategy if an applicant is not successful in developing sufficient outreach capacity to enable meaningful involvement by a community. EPA and The U.S. Institute for Environmental Conflict Resolution have designed and initiated The National Roster of Environmental Dispute Resolution and Consensus Building Professionals (http://roster.ecr.gov/Search.aspx), which is a resource to identify neutral third parties and connect them with appropriate projects.

Example 3: Community Advisory Councils, such as The Deer Park Community Advisory Council (DPCAC, http://www.deerparkcac.org/) provide a "forum for an open and frank mutual exchange of ideas between representatives of the local community and industry." These groups engage in frequent dialogue to help build understanding between industry and community.

V. Return on Investment: Benefits of Outreach to Permit Applicants

EPA recognizes that a permit applicant would need to invest time, energy and money in order to reach out to the neighboring communities. For some permit applicants, "business as usual" might appear to be the path of least resistance. But EPA has learned from conversations with permittees that permit applicants that engage in effective outreach with neighboring communities can realize a meaningful return on that investment. The list below reflects these conversations. To further illustrate these ideas, we present text (in italics) from corporate mission statements, lists of corporate values, and annual reports linking overarching business principles to benefits from effective community outreach and engagement.

1. *The neighborhood has a stake in a permit applicant's success.* Community members are not only neighbors, but also often employees, customers or investors. Healthy and sustainable

companies directly promote healthy and sustainable communities. That alignment of interests can lead to creative solutions that promote the achievement of mutual economic goals in more sustainable ways. *We are proud of our involvement in the communities where we operate. It's our goal not only to support important projects in the communities where we operate, but also to partner and build relationships where we live and work. We always listen to local needs and find ways to invest that are relevant to our business.*

2. *An environment of trust pays dividends throughout the permit term.* A permit applicant not only applies for a permit but also develops strategies for complying with its requirements. Meaningful public engagement during the permitting process and throughout the permit term can be a valuable component of a permit applicant's compliance strategy. Community members often say they have nowhere to turn when they worry about their local environment; a meaningful dialogue with the permit applicant that addresses community members' concerns can build trust. So, a permit applicant that experiences a failure of its treatment processes—and, in real time, discloses and takes action to remedy the problem—may maintain its reservoir of trust within a community. *We know you have questions; call us. We believe that people work best when there's a foundation of trust.*

3. *Engaging with a community is an effective cost-containment strategy.* Permit applicants that foster meaningful community outreach incur "costs" in terms of time, resources energy, and money. But a permit applicant that bypasses outreach incurs costs as well, especially when these choices lead to misunderstandings with community members. Even if the permit is granted, at what cost? Certainly, the permit applicant incurs the cost of delay, negative publicity among peers and investors, and community distrust (even apart from attorneys' fees associated with litigation). Each of these costs has a monetary value and each is potentially avoidable with an upfront investment. Good business sense often dictates a small investment early in order to avert larger costs later. Corporate leaders tell us that meaningful community outreach is no different. *Successful companies engage in long-term planning to achieve strategic goals. Working with the community during project development and implementation is just part of the process.*

4. *Engaging with a community is an effective risk management strategy.* Thoughtful risk-taking is a characteristic of many successful enterprises. A permit applicant engaged in thoughtful risk-taking around a new idea routinely gathers information and critically examines the idea from many perspectives, identifies the range of possible risks, modifies its idea as appropriate to minimize the risks, and then weighs the benefits against the risks that remain. The better a permit applicant anticipates and manages the risks, the more predictable and successful the outcome. Engaging community members early in a permit applicant's decision-making process can be an effective way to manage the risks of a new idea. A permit applicant that is truly open to gathering information, dialogue, and collaboration will find itself with a more predictable operating or business environment, reduced conflict, and, frequently, an outcome that achieves greater operational efficiency and community support. Its risk-taking is thoughtful because it identifies, analyzes and manages its risks. Permit applicants that are thoughtful risk-takers recognize that having an engaged and informed community as an ally promotes reasonable expectations among the public and, therefore, more predictable outcomes. *We practice humility and intellectual honesty. We consistently seek to understand and constructively deal with reality in order to create value and achieve personal improvement.*

5. *A permit applicant that engages meaningfully with a community is more likely to be considered a good neighbor.* A permit applicant is more likely to be seen as a good neighbor by a community when it makes efforts to engage and build a relationship with the community. Having treated community members as good neighbors, the permit applicant is more likely to be treated as a good neighbor by community members in return. A community that understands the actual impacts a facility has on the neighborhood and trusts the facility to behave responsibly may also be less likely to hold the facility responsible for other facilities' pollution. *We are committed to improving our environmental performance: we track our progress and report our results to the public.*

6. *Investors prefer good corporate citizens.* Even if a permit applicant survives a dispute with a community over a new project and obtains the necessary environmental permits, investors may well inquire whether that costly battle could have been avoided. Indeed, some investors might even wonder whether the permit applicant's inadequate response to the neighboring community's concerns signals a lack of corporate responsibility, values-based leadership, or long-term strategic thinking that is important in other areas of the business. Leaders in this area say: *It is more important than ever that we continually earn investor confidence. We will do this by remaining a leader in good corporate governance and providing clear, consistent, and truthful communication about our performance.*

Example 4: Collaborations in Chester, Pennsylvania

Since the early 1990s, US EPA Region III has been working closely with the community and residents of Chester. With effective collaborations and partnerships, the City of Chester and its residents have successfully worked with local business and industry, government, and academia. These community-driven partnerships have led to increased awareness of environmental justice within the City of Chester.

When citizens first raised their Environmental Justice concerns to EPA Region III, the regional Office took action by establishing a dialogue with the citizens, PADEP, PADOH, [probably worth explaining who we're talking about; I assume it's the Pa. Departments of Environmental Protection and Health] and a number of local businesses in an effort to bring greater understanding and resources to the issues and concerns. EPA Region III, PADEP, and PADOH were active in working with the community and the other partners to address the issues that had been raised. The 1995 EPA Chester Risk Study not only looked at community risk and environmental concerns, but opened dialogues among the partners, and led to the formation of a number of workgroups. The workgroups then undertook on-the-ground actions to address some of the local concerns. PADEP provided an onsite inspector for the City of Chester. EPA and PADEP continued their dialogue on Environmental Justice, holding a number of joint meetings on the issues.

Covanta Energy applied for permits to operate in Chester, and the citizens raised their concerns to Region III and PADEP. PADEP hosted a series of meetings between the citizens and the company. From these collaborative discussions, the Chester residents' concerns were heard and considered, and an agreement was reached that allowed for the citizens and the company to have their needs met. Covanta continues to work proactively with the citizens in a productive and successful partnership, primarily through a citizen-led community organization called the Chester Environmental Partnership, founded and chaired by Reverend Dr. Horace Strand. The residents and other community stakeholders, including Covanta, have worked together in a primarily cooperative fashion to effect change and environmental improvement in Chester. The Chester Environmental Partnership works to bring about environmental improvement and growth by bringing all parties to the table – industry, government, non-government organizations, and the citizens – to have face-to-face dialogue on issues of concern. Covanta has taken an active partnership role in CEP. The ongoing dialogue and ground work of the partnership is a hallmark of these collaborative efforts and reflects a community-driven model that has produced positive results for Chester and its neighbors.

VI. Conclusion

The promising practices are a starting point intended to promote partnerships between communities and permit applicants. EPA believes that a permit applicant that follows the promising practices will take an important step on the path to building a fruitful and cooperative relationship with community members on environmental issues. EPA also believes that a permit applicant's efforts to meaningfully engage an overburdened community are an important way to promote environmental justice. EPA agrees with the message that many stakeholders send: Collaborations between permit applicants and the surrounding neighborhoods achieve greater environmental protections, more profitable operations, and more sustainable communities.

[FR Doc. 2013–10945 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9811–4]

Clean Water Act: Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's action identifying water quality limited segments and associated pollutants in Louisiana to be listed pursuant to Clean Water Act Section 303(d), and request for public comment. Section 303(d) requires that States submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On May 01, 2013, EPA partially approved and proposed to partially disapprove Louisiana's 2012 Section 303(d) submittal. Specifically, EPA approved Louisiana's listing of 323 waterbody pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were added by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments.

EPA is providing the public the opportunity to review its proposed decisions to add the three waters to Louisiana's 2012 Section 303(d) List. EPA will consider public comments and if necessary amend its proposed action on the additional waterbodies identified for inclusion on Louisiana's Final 2012 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before June 10, 2013.

ADDRESSES: Comments on the decisions should be sent to Diane Smith,

Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or email: *smith.diane@epa.gov*. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 3 water quality limited segments for which EPA proposed disapproval of Louisiana's decisions not to list can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards. For those waters, States are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking. EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require States to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for States to submit Section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Louisiana submitted to EPA its listing decisions under Section 303(d) on February 01, 2013. On May 01, 2013, EPA approved Louisiana's listing of 323 water body-pollutant combinations and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were proposed for addition by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments. EPA solicits public comment on its identification of three additional waters for inclusion on Louisiana's 2012 Section 303(d) List.

Dated: May 1, 2013.

William K. Honker,

Director, Water Quality Protection Division.

[FR Doc. 2013–11109 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9811–3]

Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC); Oxides of Nitrogen Primary NAAQS Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen (NO_X) Primary National Ambient Air Quality Standards (NAAQS) Review Panel to provide consultative advice on EPA's *Draft Plan for Development of the Integrated Science Assessment (ISA) for NO_X—Health Criteria*.

DATES: The public teleconference will be held on Wednesday, June 5, 2013 from 1:00 p.m. to 4:00 p.m. (Eastern Time).

Location: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public meeting may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2050 or at *yeow.aaron@epa.gov*. General information about the CASAC, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC NO_X Primary NAAQS Review Panel will hold a public meeting to provide consultative advice on EPA's *Draft Plan for Development of the Integrated Science Assessment (ISA) for NO_X—Health Criteria*. The CASAC NO_X Primary NAAQS Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including NO_X. EPA is currently reviewing the primary (health-based) NAAQS for nitrogen dioxide (NO_2). Accordingly, the SAB Staff Office solicited nominations for the CASAC NO_X Primary NAAQS Review Panel on October 17, 2012 (77 FR 63827–63828). Membership of the Panel is listed at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees Subcommittees/CASAC%20Oxides%20of%20Nitrogen%20Primary%20NAAQS%20Review%20Panel%20(2013-2016)*.

EPA will develop several documents in support of its review of the primary (health-based) NAAQS for NO_2, drafts of which will be subject to review or consultation by the CASAC panel. These documents include the *Draft Plan for Development of the Integrated Science Assessment (ISA) for NO_X—Health Criteria;* the Integrated Review Plan (IRP) for the Primary NAAQS for NO_2; the Integrated Science Assessment (ISA) for NO_X—Health Criteria; a Risk and Exposure Assessment (REA), as warranted; and the Policy Assessment (PA). The purpose of the teleconference announced in this notice is for the CASAC Panel to provide consultative advice on the *Draft Plan for Development of the Integrated Science Assessment (ISA) for NO_X—Health Criteria*.

Availability of Meeting Materials: Agendas and materials in support of this meeting will be placed on the EPA Web site at *http://www.epa.gov/casac* in advance of the meeting. For technical questions and information concerning the review materials please contact Dr. Molini Patel of EPA's Office of Research and Development at (919) 541–1492, or *patel.molini@epa.gov*.

Procedures for Providing Public Input: Public comment for consideration by

EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by May 29, 2013 for the teleconference to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by May 29, 2013 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov*. To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: May 2, 2013.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2013–11064 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2013–0320; FRL–9810–5]

Technical Guidance for Assessing Environmental Justice in Regulatory Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of issuance of draft guidance for public comment.

SUMMARY: The Environmental Protection Agency (EPA) has issued for public comment a document entitled, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis." The purpose of this guidance is to provide EPA analysts with technical information on how to consider environmental justice in regulatory analyses. This guidance takes into account EPA's past experience in integrating EJ into the rulemaking process, and underscores EPA's ongoing commitment to ensuring the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

A Science Advisory Board (SAB) review of this document will be announced in May 2013. Information on the SAB review can be found here: *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/0f7d1a0d7d15001b8525783000673ac3!OpenDocument&TableRow=2.0#2.*

In addition, the EPA will host two webinars on the draft guidance.

Wednesday, May 29, 1:00–2:30 p.m. EST; *https://epa.connectsolutions.com/r4nnz6umjci/.*

Thursday, June 6, 3:00–4:30 p.m. EST; *https://epa.connectsolutions.com/r8fs6ctfovg/.*

DATES: Comments must be received on or before July 8, 2013, 60 days after publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2013–0320 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: maguire.kelly@epa.gov.*
- *Fax:* 202–566–2363.
- *Mail:* Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, Environmental Protection Agency, Mailcode: 1890T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2013–0320. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Technical Guidance for Assessing Environmental Justice in Regulatory Analysis Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Technical Guidance for Assessing Environmental Justice in Regulatory Analysis is (202) 566–2273.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Maguire, Office of Policy, National Center for Environmental Economics, Mail code 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail code 1809T, Washington, DC 20460; telephone number: 202–566–2273; fax number: 202–566–2363; email address: *maguire.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis is available in the public docket for this notice. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

I. General Information

The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis begins to address the issue of *how* to analytically consider environmental justice in regulatory analyses. It directs EPA analysts to assess whether potential environmental justice (EJ) concerns exist prior to the rulemaking and whether such concerns are likely to be exacerbated or mitigated for each regulatory option under consideration. The guidance makes recommendations designed to ensure consistency across EPA assessments of potential EJ concerns for regulatory actions. The recommendations encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance. They are not designed to be prescriptive and do not mandate the use of a specific approach. No new risk assessment or socio-economic assessment methods are required, thus minimizing resource or analytical burdens. This guidance takes into account EPA's past experience in integrating EJ into the rulemaking process, and underscores EPA's ongoing commitment to ensuring the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This guidance will enable EPA to conduct better analysis of regulations which will ultimately enable EPA to make better decisions.

II. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Dated: May 2, 2013.

Michael L. Goo,

Associate Administrator, Office of Policy.

[FR Doc. 2013–11165 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2013–0029]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087013XX

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: AP087013XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to the Republic of Korea.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger service from the Republic of Korea 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: Asiana Airlines, Inc.

Description of Items Being Exported

Boeing 777 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 3, 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–2013–0029 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–2013–0029 on any attached document.

Cristopolis A. Dieguez,

Office of the General Counsel.

[FR Doc. 2013–10999 Filed 5–8–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before June 10, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <mailto *PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–1153.

Title: Satellite Digital Audio Radio Service (SDARS).

Form Number: Not applicable.

Type of Review: Revision of a currently approved information collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 1 respondent and 54 responses.

Estimated Time per Response: 3–12 hours.

Frequency of Response: Annual reporting requirement; recordkeeping requirement; third-party disclosure requirement; on occasion reporting requirement.

Total Annual Burden: 308 hours.

Total Annual Costs: $97,710.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, and 47 U.S.C. 154, 301, 302a, 303, 307, 309, and 332.

Privacy Assessment: No impact(s).

Needs and Uses: The Federal Communications Commission ("Commission") is seeking approval from Office of Management and Budget (OMB) to revise OMB Control No. 3060–1153 to reflect new and/or modified information collections as a result of an Order on Reconsideration titled "In the Matter of Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band," WT Docket No. 07–293, IB Docket No. 95–91 (FCC 12–130).

On October 17, 2012, the Commission adopted and released an Order on Reconsideration that addressed five petitions for reconsideration of the 2010 WCS R&O and SDARS 2nd R&O. The petitions sought reconsideration or clarification of the Commission's decisions in the 2010 WCS R&O and SDARS 2nd R&O regarding the technical and policy rules governing the operation of WCS stations in the 2305–2320 MHz and 2345–2360 MHz bands and the operation of SDARS terrestrial repeaters in the 2320–2345 MHz band.

As part of the Order on Reconsideration, the Commission adopted proposals to relax the notification requirements for SDARS licensees under Sections 25.263(b) & (c) of the Commission's rules. As adopted in the 2010 WCS R&O and SDARS 2nd R&O, Section 25.263(b) requires SDARS licensees to share with WCS licensees

certain technical information at least 10 business days before operating a new repeater, and at least 5 business days before operating a modified repeater. Under Section 25.263(c), SDARS licensees operating terrestrial repeaters must maintain an accurate and up-to-date inventory of all terrestrial repeaters, including the information set forth in 25.263(c)(2) for each repeater, which must be made available to the Commission upon request.

The following modified information collections are contained in the Order on Reconsideration:

47 CFR 25.263(b)—SDARS licensees are required to provide informational notifications as specified in 25.263, including a requirement that SDARS licensees must share with WCS licensees certain technical information at least 10 business days before operating a new repeater, and at least 5 business days before operating a modified repeater; exempting modifications that do not increase the predicted power flux density at ground level by more than one decibel (dB) (cumulative) and exempting terrestrial repeaters operating below 2 watts equivalent isotropically radiated power.

47 CFR 25.263(c)—SDARS licensees operating terrestrial repeaters must maintain an accurate and up-to-date inventory of terrestrial repeaters operating above 2 W EIRP, including the information set forth in 25.263(c)(2) for each repeater, which shall be made available to the Commission upon request. Requirement can be satisfied by maintaining inventory on a secure Web site that can be accessed by authorized Commission staff.

The information collection requirements contained in Section 25.263 are necessary to determine the potential of radiofrequency interference from SDARS terrestrial repeaters to WCS stations. Without such information, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,621 respondents; 574,468 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these information requirements are found in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 47,693 hours. Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) The LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC-initiated PIC order. The 2005 Report and Order required IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, the Commission declined to adopt mandatory LEC-to-LEC data exchange requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–11022 Filed 5–8–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Clark Worldwide Transportation, Inc. (NVO & OFF), 121 New York Avenue, Trenton, NJ 08638, Officers: Cornelius A. Dale, Vice President (QI), Charles H. Fischer III, President, Application Type: QI Change.

CNC Worldwide, Inc. (NVO), 5343 W. Imperial Highway, Suite 300, Los Angeles, CA 90045, Officers: Eric Cheon, Secretary (QI), Henry Kim, President, Application Type: QI Change.

Defined Logistics, LLC (NVO & OFF), 898 Carol Court, Carol Stream, IL 60188, Officers: Jennifer Wolski, Chief Compliance Officer (QI), Steve Walton, President, Application Type: New NVO & OFF License.

Freight Options dba Freight Consolidation Services (OFF), 446 Cloverleaf Drive, Baldwin Park, CA 91706, Officers: Alexander C. Sahagun, President (QI), Julian L. de Vera, Chief Finance Officer, Application Type: New OFF License.

Jolaco International Procurement Inc. (NVO), 20180 Park Row, Suite 6567, Katy, TX 77449, Officers: Frederick D. Coker, President (QI), Toni R. Coker, Secretary, Application Type: New NVO License.

Mohammad Abdullatif Bagegni dba Coastal Auto Exporters (NVO & OFF), 23 Balcom Road, Pelham, NH 03076, Officer: Mohammad Bagegni, Sole Proprietor (QI), Application Type: Add NVO Service.

By the Commission.

Dated: May 5, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–10994 Filed 5–8–13; 8:45 am]

BILLING CODE 6730–01–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 May 24, 2013.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *CITIC Group Corporation, and CITIC Limited*, both in Bejing, The People's Republic of China; to acquire CLSA Americas, LLC, New York, New York, and thereby engage in providing financial and investment advice and brokerage services, pursuant to sections 225.28(b)(6) and (b)(7).

Board of Governors of the Federal Reserve System, May 6, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–11023 Filed 5–8–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121; Docket 2013–0001; Sequence 6]

General Services Administration Acquisition Regulation; Submission for OMB Review; Industrial Funding Fee and Sales Reporting

AGENCY: Acquisition Policy Division, GSA.

ACTION: Notice of request for comments regarding a reinstatement of an information collection for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding industrial funding fee and sales reporting. A notice was published in the **Federal Register** at 77 FR 76446, on December 28, 2012. One comment was received.

DATES: Submit comments on or before: June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, Contract Policy Branch, at telephone (202) 357–9652 or via email to *dana.munson@gsa.gov.*

ADDRESSES: Submit comments identified by *Information Collection 3090–0121, Industrial Funding Fee (IFF) and Sales Reporting,* by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0121, Industrial Funding Fee (IFF) and Sales Reporting". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0121, Industrial Funding Fee (IFF) and Sales Reporting" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0121, Industrial Funding Fee (IFF) and Sales Reporting.

Instructions: Please submit comments only and cite Information Collection 3090–0121, Industrial Funding Fee (IFF) and Sales Reporting, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA is amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR/GSAM clauses to address use of the Industrial Funding Fee (IFF) under the Multiple Award Schedules (MAS) Program, to reflect the current use of the Industrial Funding Fee including the authority to offset losses in other Federal Acquisition Service (FAS) programs and fund initiatives that benefit other FAS programs.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

B. Discussion and Analysis

One comment pertaining to the collection was received.

Comment 1: Commenter supports the proposed change to the GSAR that will increase the transparency of how the IFF is used. However, felt that the estimated burden was understated based on the time and money vendors spend developing systems to track purchases and ensuring that reporting is accurate.

GSA Response: Estimated burden hours already take into consideration the varying amount of time it can take to comply with the clause each quarter and is meant to represent an average across the entire Multiple Award Schedules Program.

No changes were made to the collection as a result of the comment received.

C. Annual Reporting Burden

Respondents: 19,000.
Responses per Respondent: 4.
Total Responses: 76,000.
Hours per Response: .0833.
Total Burden Hours: 6,330.80.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from

the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 208–7312. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: May 1, 2013.

Steve Kempf,

Acting Senior Procurement Executive.

[FR Doc. 2013–10892 Filed 5–8–13; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.095]

Announcing the Award of a New Single-Source Award to the National Council on Family Violence in Austin, TX

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice of the award of a single-source cooperative agreement to the National Council on Family Violence to support the National Domestic Violence Hotline (Hotline).

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Family Violence and Prevention Services (DFVPS) announces the award of a single-source cooperative agreement in the amount of $275,000 to the National Council on Family Violence in Austin, TX, for the Hotline. The Hotline, currently funded under the Family Violence Prevention and Services Act, provides direct services and referrals nationally for victims of family violence, domestic violence, and dating violence.

DATES: The period of support for this award is May 1, 2013 through April 30, 2015.

FOR FURTHER INFORMATION CONTACT: Angela Yannelli, Senior Program Specialist, Division of Family Violence Prevention and Services, 1250 Maryland Avenue SW., Suite 8210, Washington, DC 20024. Telephone: 202–401–5524; Email: *Angela.Yannelli@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Award funds will support the efforts of the Hotline in providing critical services to victims of Hurricane Sandy that are also victims of family violence, domestic violence, and dating violence within the states of New Jersey and New York. The Hotline will conduct training for current disaster responders, provide training and technical assistance to local programs that run hotlines/crisis lines, and develop a public awareness campaign to publicize the various ways to contact the Hotline, the Teen Dating Abuse Helpline, state hotlines, and local program hotlines.

Reports from the New York and New Jersey Disaster Task Forces indicate the need for training on domestic violence in disaster response situations and on making connections to appropriate services for disaster case managers and for state, regional, and federal staff involved with on-scene response. Front-line disaster relief staff and volunteers may be the first responders to observe domestic violence in families they are supporting; however, they may not be able to discern signs of domestic violence due to a lack of training. In fact, many responders may confuse the stresses of the disaster with the stresses of domestic violence on the victim and may overlook abusive behaviors on the part of the intimate partner as signs of stress from the disaster.

Though based in Austin, TX, the Hotline's experience in providing victim advocacy, referrals, and program support makes it well-positioned to provide training to disaster responders in New York and New Jersey. Training will concentrate on protocols and referral procedures, accessing domestic violence services, recognizing the warning signs of domestic violence, safety planning, and maintaining ongoing health and wellness initiatives during the crisis response and recovery phase. In this effort, the Hotline will partner with the New Jersey Coalition for Battered Women, the New York State Coalition Against Domestic Violence, and national experts on domestic violence and disaster response to develop and offer appropriate and effective training.

Statutory Authority: Public Law 113–2, Disaster Relief Appropriations Act of 2013.

Bryan L. Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2013–11075 Filed 5–8–13; 8:45 am]

BILLING CODE 4184–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Health Resources and Services Administration (HRSA) will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

Information Collection Request Title: Patient Survey—Health Centers (OMB No. 0915–xxxx)—[NEW]

Abstract: The Health Center program supports Community Health Centers (CHCs), Migrant Health Centers (MHCs), Health Care for the Homeless (HCH) programs, and Public Housing Primary Care (PHPC) programs. Health Centers (HCs) receive grants from HRSA to provide primary and preventive health care services to medically underserved populations. The proposed Patient Survey will collect information about HC patients, regarding their health status, the reasons for seeking care at HCs, their health-related diagnoses, health services they obtain at HCs and from other healthcare settings, the quality of those services received, and their satisfaction with the care they received. This information will be collected through in-person interviews from a nationally representative sample of HC patients. Prior to the deployment of the national study, a cognitive pre-test will be conducted to refine and test the face validity and internal validity of questions in the survey instrument in different languages, and test the survey sampling methodologies and procedures. The pre-test will include cognitive interviews to ensure that the questions are being understood as were intended. Interviews conducted in the pre-test and the national study are

estimated to take approximately up to 1 hour and 15 minutes each.

The Patient Survey builds on previous periodic Patient User-Visit Surveys, which were conducted to learn about the process and outcomes of care in CHCs, MHCs, HCHs, and PHPCs. The original questionnaires were derived from the National Health Interview Survey (NHIS) and the National Ambulatory Medical Care Survey (NAMCS) conducted by the National Center for Health Statistics (NCHS). Conformance with the NHIS and NAMCS allowed comparisons between these NCHS surveys and the previous User-Visit Surveys. The new Patient Survey was developed using a questionnaire methodology similar to that used in the past, and will also potentially allow some time-trend comparisons for HCs with the previous User-Visit survey data, including monitoring of processes and outcomes over time. In addition, this wave of the survey will be conducted in languages not used in previous surveys (English and Spanish only), and will include patients from the fastest growing U.S. population segment, Asian Americans and Pacific Islanders. Languages that will be used in the proposed survey include Chinese (Mandarin and Cantonese), Korean, Vietnamese, Spanish, and English. With the exception of Spanish speakers, other racial and ethnic subgroups were not able to participate in previous surveys in their own languages.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee/Site Recruitment	2	3	6	3.0	18.00
Patient Recruitment (At clinic)	21	1	21	0.17	3.57
Patient Survey (Administered at clinic)	15	1	15	1.25	18.75
Patient Recruitment (Through local advertisements/flyers/ word-of-mouth)	71	1	71	0.08	5.68
Patient Survey (Administered following local advertising)	54	1	54	1.25	67.50
Total Pretest	69				113.50

ADDRESSES: Submit your comments to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806. Please direct all correspondence to the "attention of the desk officer for HRSA."

Deadline: Comments on this ICR should be received within 30 days of this notice.

Dated: May 3, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–11088 Filed 5–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Countermeasures Injury Compensation Program (OMB No. 0915–0334)—Revision

Abstract: This is a revision to the request for OMB approval of the information collection requirements for the Countermeasures Injury Compensation Program (CICP or Program). The CICP, within the Health Resources and Services Administration (HRSA), administers the compensation program specified by the Public Readiness and Emergency Preparedness Act (PREP Act). The CICP provides compensation to eligible individuals (requesters) who suffer serious injuries directly caused by a covered countermeasure administered or used pursuant to a PREP Act Declaration, or to their estates and/or survivors. A declaration is issued by the Secretary of the Department of Health and Humans Services (Secretary). The purpose of a declaration is to identify a disease, health condition, or a threat to health that is currently, or may in the future constitute, a public health emergency. In addition, the Secretary, through a declaration, may recommend and encourage the development, manufacturing, distribution, dispensing, and administration or use of one or more covered countermeasures to treat, prevent, or diagnose the disease, condition, or threat specified in the declaration.

To determine whether a requester is eligible for Program benefits (compensation) for the injury, the CICP

must review the Request for Benefits Package, which includes the Request for Benefits Form and Authorization for Use or Disclosure of Health Information Form(s), as well as the injured countermeasure recipient's medical records and supporting documentation.

A requester who is an injured countermeasure recipient may be eligible to receive benefits for unreimbursed medical expenses and/or lost employment income. The estate of a deceased countermeasure recipient may also be eligible to receive medical benefits and/or benefits for lost employment income accrued prior to the injured countermeasure recipient's death. If death was the result of the administration or use of the countermeasure, certain survivor(s) of deceased eligible countermeasure recipients may be eligible to receive a death benefit, but not unreimbursed medical expenses or lost employment income benefits (42 CFR § 110.33). The death benefit is calculated using either the "standard calculation" or the "alternative calculation." The "standard calculation" is based on the death benefit available under the Public Safety Officers' Benefits (PSOB) Program (42 CFR § 110.82(b)). The "alternative calculation" is based on the deceased countermeasure recipient's income and is only available to the recipient's dependent(s) who is (are) younger than age 18.

Approval is requested for the required continued information collection via the Request for Benefits Package, which has been updated to include all categories of potentially eligible requesters, including adult children, so that the CICP may continue to accept and process requests for benefits. The Request for Benefits Form and Instructions have been revised to remove the request for a social security number, update the CICP Web site address, and add a new category of eligible requesters, adult children. This new category was added because the CICP is generally required to use the same categories of survivors in order of priority for benefits as established and defined by the PSOB Program (42 CFR § 110.11(b)). This new category of survivors was added under the PSOB Program.

Approval is requested for new mechanisms of medical documentation and supporting documentation collection. During the eligibility review, the CICP would like to provide requesters with the opportunity to supplement their case files with additional medical records and supporting documentation before a final Program decision is made. The CICP would ask requesters to complete and sign a form indicating whether they intend to submit additional documentation prior to the final determination of their case.

Approval is requested for a benefits documentation package the CICP plans to send to requesters who may be eligible for compensation, which includes certification forms and instructions outlining the documentation needed to determine the types and amounts of benefits. This documentation is required under 42 CFR § 110.61–110.63 of the CICP's implementing regulations to enable the Program to determine the types and amounts of benefits the requester may be eligible to receive.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Request for Benefits Form and Supporting Documentation	100	1	100	11	1,100
Authorization for Use or Disclosure of Health Information Form	100	1	100	2	200
Additional Documentation and Certification	30	1	30	*.75	22.5
Benefits Package and Supporting Documentation	30	1	30	.125	3.75
Total	260	4	260	13.875	1,326.25

*45 min.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: May 3, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–11090 Filed 5–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[Docket Number: OIG–1300–N]

Updated Special Advisory Bulletin on the Effect of Exclusion From Participation in Federal Health Care Programs

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice announces the release of an updated Special Advisory Bulletin on the effect of exclusion from participation in Federal health care programs by OIG. The updated Special Advisory Bulletin describes the scope and effect of the legal prohibition on payment by Federal health care programs for items or services furnished (1) by an excluded person or (2) at the medical direction or on the prescription of an excluded person. For purposes of OIG exclusion, payment by a Federal health care program includes amounts based on a cost report, fee schedule,

prospective payment system, capitated rate, or other payment methodology. The updated Bulletin describes how exclusions can be violated and the administrative sanctions OIG can pursue against those who have violated an exclusion. The updated Bulletin also provides guidance to the health care industry on the scope and frequency of screening employees and contractors to determine whether they are excluded persons.

OIG has posted the full revision of the Special Advisory Bulletin on its Web site: *http://oig.hhs.gov/exclusions/advisories.asp.*

FOR FURTHER INFORMATION CONTACT: Patrice S. Drew, Congressional and Regulatory Affairs, Office of Inspector General, (202) 619–1368.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2013–11055 Filed 5–8–13; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Interactive Informed Consent for Pediatric Clinical Trials

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute Heart, Lung, and Blood Institute (NHBLI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Victoria Pemberton, Clinical Trials Specialist, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 8102, MSC 7940, Bethesda, MD, or call non-toll-free number 301–435–0510, or Email your request, including your address to: *pembertonv@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Interactive Informed Consent for Pediatric Clinical Trials, 0925-New, National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Need and Use of Information Collection: This study will compare parents' and children's understanding of information about a hypothetical clinical trial presented using either a standard paper consent document or an interactive computer-based consent program. Parents' and children's understanding, regardless of whether they received the standard consent or the interactive computer-based program, will be assessed by face-to-face interview. In addition, parents' and children's perceptions of, and satisfaction with, the information presented will be evaluated by completion of a short questionnaire. The primary hypothesis to be tested is that interactive computer-based research consent information is better understood and accepted by parents and children compared with the standard paper consent document. Given that many individuals have difficulty reading and interpreting standard written consent documents, this technology holds promise as a means to optimize the consent and assent process particularly among individuals with low literacy and numeracy skills.

OMB approval is requested for 18 months. There are no costs to respondents other than their time. The total estimated annualized burden hours are 201.

Type of respondents	Number of respondents	Number of responses per response	Average burden per response (in hour)	Total annual burden hours
Parents	148	1	40/60	99
Children	136	1	45/60	102

Dated: April 29, 2013.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

Michael S. Lauer,

Director, DCVS, National Institutes of Health.

[FR Doc. 2013–11034 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Systems Science and Health in the Behavioral and Social Sciences.

Date: June 6, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Persan: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgan@csr.nih.gov.*

Name of Cammittee: Center for Scientific Review Special Emphasis Panel; Behavioral Science.

Date: June 6, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Cantact Person: Christine L Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gav.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–216: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: June 6, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Seattle Airport Marriott, 3201 S 176th Street, Seattle, WA 98188.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–140: Role of the Microflora in the Etiology of Gastro-Intestinal Cancer.

Date: June 6, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agendo: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gav.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–140: Role of the Microflora in the Etiology of Gastro-Intestinal Cancer.

Date: June 6, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter J Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gav.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational and Basic Research to Control Itch in Humans.

Date: June 6, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chicago O'Hare—Rosemont, 5500 N. River Road, Rosemont, IL 60018.

Cantact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Cammittee: Center for Scientific Review Special Emphasis Panel; Pathophysiology and Clinical Studies of Osteonecrosis of the Jaw.

Date: June 7, 2013.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Cantact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Statistical Genetics Supplements.

Dote: June 7, 2013.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2013.

Michelle Trout,

Pragram Anolyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10975 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name af Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: June 3–4, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Cantact Persan: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Seattle Airport Marriott, 3201 South 176th Street, Seattle, WA 98188.

Cantact Persan: Behrouz Shabestari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gav.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Nome of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Dote: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Ploce: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Persan: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gav*.

Name af Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Dote: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Contoct Person: Dennis Hlasta, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC, Bethesda, MD 20892, 301–435–1047, *dennis.hlosto@nih.gav*.

Nome of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Seattle Airport Marriott, 3201 South 176th Street, Seattle, WA 98188.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Risk, Prevention and Intervention for Addictions Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fasug@csr.nih.gav*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Ploce: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue. Bethesda, MD 20814.

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name af Committee: Immunology Integrated Review Group Innate Immunity and Inflammation Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agendo: To review and evaluate grant applications.

Place: Marriott Residence Inn National Harbor, 192 Waterfront Street, National Harbor, MD 20745.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contoct Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: June 6–7, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agendu: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthamas@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: June 6–7, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Ploce: Palomar Hotel, 2121 P Street NW., Washington, DC 20037.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@moil.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Genetics and Epidemiology: Collaborative Applications.

Date: June 6, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contoct Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *vaglergp@csr.nih.gav*.

Name af Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: June 6–7, 2013.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

Nome of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Dote: June 6–7, 2013.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Seattle Airport Marriott, 3201 South 176th Street, Seattle, WA 98188.

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *ixiong@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: June 7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: June 7, 2013.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 3014350904, *sara.ahlgren@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 7, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10978 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Craig Giroux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, 301–237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Dote: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: June 6–7, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 435–2306, *boundst@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10972 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: June 3–4, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Christine Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community-Level Health Promotion Study Section.

Date: June 3, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 5, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function E Study Section.

Date: June 5, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tremont Suites Hotel and Grand Historic Venue, 222 St. Paul Place, Baltimore, MD 21202.

Contact Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182,

MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: June 6, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tremont Suites Hotel and Grand Historic Venue, 222 St. Paul Place, Baltimore, MD 21202.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Cognition and Perception Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: June 6–7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: June 6–7, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: June 6, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10971 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enzyme Regulation.

Date: May 7, 2013.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10974 Filed 5–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–24]

Notice of Proposed Information Collection; Comment Request: Application for Insurance Benefits Multifamily Mortgage

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 8, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Steven Trojan, Accountant, Multifamily Claims Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2807 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: HUD is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality,

utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Mortgagee's Application for Insurance Benefits.

OMB Control Number, if applicable: 2502–0419.

Description of the need for the information and proposed use: A lender with an insured multifamily mortgage pays an annual insurance premium to the Department. When and if the mortgage goes into default, the lender may elect to file a claim for insurance benefits with the Department. A requirement of the claims process is the submission of an application for insurance benefits. Form HUD 2747, Mortgagee's Application for Insurance Benefits (Multifamily Mortgage), satisfies this requirement.

Agency form numbers, if applicable: Form HUD 2747.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of annual burden hours is 9, the number of respondents is 110 per year, the frequency of response is on occasion, and the burden hour per response is .08.

Status of the proposed information collection: This is a request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 3, 2013.

Laura M. Marin,

Acting General Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–11031 Filed 5–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–FA–39]

Announcement of Funding Awards for Fiscal Year 2012/2013; Strong Cities, Strong Communities National Resource Network

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2012/2013 Strong Cities, Strong Communities National Resource Network (SC2 Network). The purpose of this document is to announce the name and address of the award winner and the amount of the award to be used to provide comprehensive technical assistance to distressed communities across the country.

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Office of Policy, Development and Research (PD&R), U.S. Department of Housing and Urban Development, Room 8116, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 402–4986. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: One of four key components to the White House Strong Cities, Strong Communities Initiative (SC2), the SC2 Network is a capacity building program targeted to assisting the nation's most distressed communities. The SC2 Network will function as a central portal to connect distressed places to a wide-array of national and local experts who would help communities address their broad economic challenges. As described in the Notice of Funding Availability (NOFA) for the SC2 Network, HUD will make one award of approximately $10 million to an entity or consortium to execute the SC2 Network. The grant will be awarded as a cooperative agreement for a three-year period.

The White House Council on Strong Cities, Strong Communities and PD&R administers this program. In addition to this program, PD&R administers another key component of the White House SC2 initiative—the SC2 Fellowship Placement Pilot Program that places early-to-mid career professionals into distressed communities to work on a broad range of strategic projects.

The Catalog of Federal Domestic Assistance number for this program is 14.534.

On November 28, 2012, a SC2 Network NOFA was posted on Grants.gov announcing the availability of approximately $10 million in FY 2012 to administer the program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545).

Dated: May 1, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy, Development and Research.

List of Awardee for Grant Assistance Under the Fiscal Year 2012/2013 Strong Cities, Strong Communities National Resource Network Competition, by Institution, Address, and Grant Amount

1. Enterprise Community Partners, Inc. (lead applicant), 10227 Wincopin Circle, Columbia, MD 21044 Grant: $9,879,360.

[FR Doc. 2013–11032 Filed 5–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N103; FXES11130800000–134–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before June 10, 2013.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife

Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9618).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 et seq.). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–207873

Applicant: Carol Thompson, Riverside, California

The applicant requests a permit renewal to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (survey, capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*); and an amendment to take (survey, capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with population monitoring and survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–040553

Applicant: Daniel Marshalek, Madison, Wisconsin

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and an amendment to take (survey by pursuit) the Laguna mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–025732

Applicant: Samuel S. Sweet, Santa Barbara, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, tag, take biological samples, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, handle, take biological samples, restrain, and maintain in enclosures in-stream, release, and relocate) the arroyo toad (a. southwestern t.) (*Anaxyrus californicus (Bufo microscaphus c.)*) in conjunction with surveys, population monitoring, and research activities in Santa Barbara, San Luis Obispo, Ventura, and Los Angeles Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–834488

Applicant: Gregg B. Miller, Orange, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and take (survey, capture, handle, measure, mark, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with survey activities in San Bernardino, Riverside, San Diego, Los Angeles, and Orange Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–823990

Applicant: Sandra J. Schultz, Los Osos, California

The applicant requests a permit renewal to take (survey, locate, and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. b.*) in conjunction with survey activities in Santa Barbara and San Luis Obispo Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–804203

Applicant: Stephen J. Meyers, Moreno Valley, California

The applicant requests a permit renewal to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests, capture, handle, measure, weigh, band, color-band, release) the least Bell's vireo (*Vireo belli pusillus*); take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey and population activities throughout the range of each species in California, Nevada, Arizona, New Mexico, Utah, and Colorado (as applicable) for the purpose of enhancing the species' survival.

Permit No. TE–17841A

Applicant: Tetra Tech Incorporated, Santa Barbara, California

The applicant requests a permit renewal to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–798017

Applicant: Dana C. Bland, Aptos, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, handle, mark, release, and collect) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), in conjunction with surveys and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–780556

Applicant: Ruben S. Ramirez, Oceanside, California

The applicant requests a permit renewal to take (capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) and San Bernardino kangaroo rat (*Dipodomys merriami parvus*); and take (capture, tag, and release) the arroyo toad (a. southwestern t.) (*Anaxyrus californicus (Bufo microscaphus c.)*) in conjunction with surveys and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–782703

Applicant: Michael C. Couffer, Corona del Mar, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–839213

Applicant: David P. Muth, Martinez, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–157199

Applicant: Julie A. Stout, San Diego, California

The applicant requests a permit renewal to take (survey, locate, and monitor nests) the California least tern (*Sternula antillarum browni)* (*Sterna a. b.*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–200340

Applicant: Andrew R. Hatch, South Lake Tahoe, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–181714

Applicant: University of Colorado, Boulder, Colorado

The applicant requests an amendment to a permit to take (survey, capture, handle, take biological samples, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with surveys and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–837308

Applicant: John K. Konecny, Escondido, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, capture, band, release, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests, capture, band, release, and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*); take (survey, locate and nest monitor, nest mark, capture, band, and release) the California least tern (*Sternula antillarum browni)* (*Sterna a. b.*); take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*) and Yuma clapper rail (*Rallus longirostris yumanensis*); and take (capture, handle, and release) the arroyo toad (a. southwestern t.) (*Anaxyrus californicus (Bufo microscaphus c.)*) in conjunction with surveys, population studies, and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–166383

Applicant: Michael F. Westphal, Hollister, California

The applicant requests a permit renewal to take (capture, handle, take biological samples, and release) the blunt-nosed leopard lizard (*Gambelia silus*) in conjunction with surveys, population studies, and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–170389

Applicant: Travis B. Cooper, San Juan Capistrano, California

The applicant requests a permit renewal to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–99477A

Applicant: Benjamin S. Wallace, Fairfield, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and population monitoring in Solano, Yolo, Sacramento, Contra Costa, and Alameda Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–225974

Applicant: Midpeninsula Regional Open Space District, Los Altos, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with habitat management activities in San Mateo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–31406A

Applicant: California State Parks, Channel Coast District, Ventura, California

The applicant requests an amendment to a permit to take (set up, use, and remove remote sensing cameras in occupied habitat) the California least tern (*Sternula antillarum browni)* (*Sterna a. b.*) in conjunction with survey activities in Santa Barbara and San Luis Obispo Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–99473A

Applicant: Joseph D. Henry, San Diego, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–814222

Applicant: California Department of Parks and Recreation, San Diego, California

The applicant requests a permit renewal to take (harass by survey, locate, and monitor nests, and remove brown-headed cowbird eggs (*Molothrus ater*) from nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests and remove brown-headed cowbird eggs from nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (harass by survey and locate and monitor nests) the California least tern (*Sternula antillarum browni)* (*Sterna a. b.*) in conjunction with survey and population monitoring activities on California State Park Lands in San Diego, Imperial, Orange, Riverside, and southwestern San Bernardino Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–01769B

Applicant: Jesse L. Reebs, San Francisco, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger

salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) and the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–068745

Applicant: Jeffrey T. Wilcox, Berkeley, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, tail clip, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys, population studies, and genetic research throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–824123

Applicant: SWCA Environmental Consultants, San Luis Obispo, California

The applicant requests a permit renewal to take (locate, capture, handle, measure, release, and relocate) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys, relocation, and habitat enhancement activities in San Luis Obispo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–035336

Applicant: John E. Vollmar, Berkeley, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey and restoration activities; and take (remove and reduce to possession from lands under Federal jurisdiction) the *Amsinckia grandiflora* (large-flowered fiddleneck) in conjunction with propagation and reintroduction activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–043630

Applicant: San Francisco Estuary Institute, Richmond, California

The applicant requests a permit renewal to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with survey activities throughout the extant range of the species within the jurisdiction of the Sacramento Fish and Wildlife Service Office, California, for the purpose of enhancing the species' survival.

Permit No. TE–01768B

Applicant: Brian E. Karpman, Costa Mesa, California

The applicant requests a permit to take (locate and monitor nests and remove brown-headed cowbird eggs (*Molothrus ater*) from nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–808242

Applicant: Scott D. Cameron, Santa Paula, California

The applicant requests a permit renewal to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*); and take (survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) and arroyo toad (a. southwestern t.) (*Anaxyrus californicus (Bufo microscaphus c.)*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–083348

Applicant: San Bernardino County Department of Public Works, San Bernardino, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*); and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities in San Bernardino County, California, for the purpose of enhancing the species' survival.

Permit No. TE–797234

Applicant: LSA Associates, Point Richmond, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–036120

Applicant: Michael S. Powers, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–204436

Applicant: Johanna M. Kisner, Orcutt, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys and population monitoring activities throughout the range of each species in California with the exception of Mendocino, Humboldt, and Del Norte Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–050450

Applicant: Lisa D. Allen, San Juan Capistrano, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–27460A

Applicant: Brian A. Zitt, Santa Ana, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, measure, and release)

the mountain yellow-legged frog (southern California DPS) (*Rana muscosa*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02838B

Applicant: Summer L. Pardo, Sacramento, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–02785B

Applicant: Cheryl L. Davis, Concord, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–37418A

Applicant: William T. Bean, Arcata, California

The applicant requests an amendment to a permit to take (survey, capture, handle, collect biological samples and hair tufts, and release) the giant kangaroo rat (*Dipodomys ingens*) in conjunction with genetic research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02578B

Applicant: Craig P. Seltenrich, Auburn, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–101462

Applicant: Peter G. Sarafian, Los Osos, California

The applicant requests a permit to take (locate, capture, handle, measure, release, and relocate) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys, relocation, and habitat enhancement activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–118356

Applicant: Olofson Environmental, Incorporated, Berkeley, California

The applicant requests a permit renewal to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with survey and research activities in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–095896

Applicant: Phillip C. Richards, Ladera Ranch, California

The applicant requests a permit renewal to take (capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and San Bernardino kangaroo rat (*Dipodomys merriami*) in conjunction with survey activities in San Diego, Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–212445

Applicant: Robert A. Schell, Richmond, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) and take (harass by survey, capture, handle, collect tissue samples, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–02737B

Applicant: Susan B. Dewar, Rocklin, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the ADDRESSES section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013–11078 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N110; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and

Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before June 10, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by June 10, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–03663B

The applicant requests a permit to import one captive-born female brush-tailed bettong (*Bettongia penicillata*) from Aqua Zoo Friesland, Netherlands, for the purpose of enhancement of the survival of the species.

Applicant: Spencer Scott, San Antonio, TX; PRT–01537B

The applicant requests a permit to import the sport-hunted trophy of one male black rhinoceros (*Diceros bicornis*) taken from a ranch in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Application: Santa Ana Zoo, Santa Ana, CA; PRT–96502A

The applicant requests a permit to export two captive bred golden lion tamarin (*Leontopithecus rosalia*) to the Wellington Zoo, New Zealand, for the purpose of enhancement of the propagation of the species.

Applicant: Matson's Laboratory, LLC., Milltown, MT; PRT–95363A

The applicant requests a permit to import teeth obtained from wild salvaged specimens of African wild dog (*Lycaon pictus*) for the purpose of enhancement of the survival of the species/scientific research.

Applicant: Delorce Bennett, Awendaw, SC; PRT–119213

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Guarouba guarouba*), Cuban parrot (*Amazona leucocephala*) and Vinaceous parrot (*Amazona vinacea*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: World Center for Exotic Birds, Las Vegas, NV; PRT–787054

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for Andean condor (*Vultur gryphus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Susan Minor, Medina, TX; PRT–04775B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoo Atlanta, Atlanta, GA; PRT–04821B

The applicant requests a permit to export two male captive-bred giant pandas (*Ailuropoda melanoleuca*) born at the zoo in 2004 and 2010, which are owned by the Government of China, to the Chengdu Research Base of Giant Panda Breeding. The applicant would also like to export frozen semen from the male panda Yang Yang held at the zoo; both exports are under the terms of Zoo Atlanta loan agreement with the Chinese Association of Zoological Gardens, Ministry of Construction, the China Wildlife Conservation Association, and the State Forestry

Administration. These exports are part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in Zoo Atlanta's original permit.

Applicant: Sunset Zoo, Manhattan, KS; PRT–679476

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Cebidae
Felidae (*does not* include jaguar, margay, or ocelot)
Lemuridae
Gruidae
Psittacidae
Sturnidae

Species:
Maned wolf (*Chrysocyon brachyurus*)
Parma wallaby (*Macropus parma*)

Applicant: Brittany Boddington, Northridge, CA; PRT–04943B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Sea World Parks & Entertainment, Inc., Orlando, FL; PRT–03132B

The applicant requests a permit to import one female walrus (*Odobenus rosmarus*) that was captive bred at and would be exported by Dolfinarium Harderwijk, The Netherlands, for the purpose of public display at Sea World Orlando.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–11068 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N111; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the Marine Mammal Protection Act (MMPA), as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
229051	David Reinke	74 FR 58977; November 16, 2009	April 4, 2013.
29819A	U.S. Fish and Wildlife Service	76 FR 10623; February 25, 2011	May 17, 2012.
52995A	Topeka Zoological Park	77 FR 298; January 4, 2012	August 15, 2012.
60276A	Hatada Enterprises, Inc.	77 FR 298; January 4, 2012	August 31, 2012.
053952	James Whipple & Nancy Nunke	77 FR 9687; February 17, 2012	July 11, 2012.
209126	Zoo of Acadiana, L.L.C	77 FR 15383; March 15, 2012	May 4, 2012.
66629A	Forest Land L.L.C	77 FR 15383; March 15, 2012	May 7, 2012.
007870	Smithsonian National Zoological Park	77 FR 15383; March 15, 2012	September 27, 2012.
67611A	Harkey Ranch	77 FR 17494; March 26, 2012	May 2, 2012.
726004	Earth Promise, Inc	77 FR 17494; March 26, 2012	May 2, 2012.
67609A	Georgia Aquarium	77 FR 17494; March 26, 2012	May 2, 2012.
819300	Jay Russo	77 FR 17494; March 26, 2012	May 2, 2012.
67603A	James Thompson	77 FR 17494; March 26, 2012	May 2, 2012.
67606A	Dakota Resources, Inc	77 FR 17494; March 26, 2012	May 4, 2012.
67542A	Michelle Crawford	77 FR 17494; March 26, 2012	May 4, 2012.
67605A	Dakota Resources, Inc	77 FR 17494; March 26, 2012	May 4, 2012.
195196	Lionshare Farm Zoological LLC	77 FR 17494; March 26, 2012	May 4, 2012.
67541A	Michelle Crawford	77 FR 17494; March 26, 2012	May 4, 2012.
671151	Maryland Zoo in Baltimore	77 FR 19311; March 30, 2012	May 4, 2012.
679557	North Carolina Zoological Park	77 FR 19311; March 30, 2012	May 4, 2012.
189854	Northeastern Wisconsin Zoo	77 FR 19311; March 30, 2012	May 4, 2012.
69947A	Bruce Fairchild	77 FR 19311; March 30, 2012	May 9, 2012.
66619A	Fallow Creek Ranch	77 FR 19311; March 30, 2012	May 9, 2012.
69566A	Hacienda Yturria LLC	77 FR 19311; March 30, 2012	May 9, 2012.
69142A	Los Senderos Ranch	77 FR 19311; March 30, 2012	May 9, 2012.
67412A	NNNN Operations LLC	77 FR 19311; March 30, 2012	May 9, 2012.
69143A	Wilco Ranch, LP	77 FR 19311; March 30, 2012	May 9, 2012.
69946A	Bruce Fairchild	77 FR 19311; March 30, 2012	May 24, 2012.
66618A	Fallow Creek Ranch	77 FR 19311; March 30, 2012	May 24, 2012.
69568A	Hacienda Yturria LLC	77 FR 19311; March 30, 2012	May 24, 2012.

ENDANGERED SPECIES—Continued

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
69141A	Los Senderos Ranch	77 FR 19311; March 30, 2012	May 24, 2012.
67414A	NNNN Operations LLC	77 FR 19311; March 30, 2012	May 24, 2012.
69144A	Wilco Ranch, LP	77 FR 19311; March 30, 2012	May 24, 2012.
685135	Bramble Park Zoo	77 FR 20838; April 6, 2012	May 8, 2012.
69093A	Friedel Ranch	77 FR 20838; April 6, 2012	May 8, 2012.
70470A	Lucky 7 Exotics Ranch	77 FR 20838; April 6, 2012	May 8, 2012.
69574A	Preserve II P.O.A	77 FR 20838; April 6, 2012	May 8, 2012.
676508	Six Flags Discovery Kingdom	77 FR 20838; April 6, 2012	May 8, 2012.
70466A	Lucky 7 Exotics Ranch	77 FR 20838; April 6, 2012	May 24, 2012.
65826A	Preserve II P.O.A	77 FR 20838; April 6, 2012	May 24, 2012.
71315A	Arizona Tortoise Compound	77 FR 24510; April 24, 2012	May 31, 2012.
680316	Little Rock Zoological Gardens	77 FR 24510; April 24, 2012	May 31, 2012.
187257	Eric Meffre	77 FR 24510; April 24, 2012	May 31, 2012.
71633A	Edward Merritt	77 FR 24510; April 24, 2012	May 31, 2012.
761357	Racine Zoological Society	77 FR 24510; April 24, 2012	May 31, 2012.
756101	Rare Species Conservatory Foundation	77 FR 24510; April 24, 2012	May 31, 2012.
88938A	Rhodes Brothers Taxidermy	78 FR 12777; February 25, 2013	April 24, 2013.
99723A	Coll John	78 FR 17711; March 22, 2013	April 23, 2013.
99724A	Montague James	78 FR 17711; March 22, 2013	April 23, 2013.
97814A	Michael Couch	78 FR 17711; March 22, 2013	April 23, 2013.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–11052 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

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Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, June 8, 2013, from 8 a.m. to 4:30 p.m. in Ridgecrest, Calif. at a location to be announced later. There also will be a DAC Business Meeting on Friday, June 7, from noon to 4:30 p.m. at the Jawbone Station Visitors Center, California Highway 14 and Jawbone Canyon Rd., Cantil, Calif. Details will be posted on the DAC Web page, *http://www.blm.gov/ca/st/en/info/rac/dac.html*, when finalized. Agenda topics for the Saturday meeting will include a focus on the West Mojave Plan, as well as updates by council members, the BLM California Desert District manager, five field office managers, and council subgroups. Final agenda items will he posted on the DAC Web page listed above.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8:00 a.m. to 4:30 p.m., the meeting could conclude prior to 4:30 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: May 1, 2013.

Teresa A. Raml,

District Manager, California Desert District.

[FR Doc. 2013–11073 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation and are new, modified, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
ID Irrigation and Drainage District
ID Irrigation District
LCWSP Lower Colorado Water Supply Project
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

Modified contract action:

8. Four irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with five entities for the provision of up to 534 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

The Mid-Pacific Region has no updates to report for this quarter.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

Completed contract action:

11. Arizona Recreational Facilities, LLC and Lake Havasu City, BCP, Arizona: Approve a partial assignment and transfer of 12.7 acre-feet per year of Arizona fourth priority Colorado River water from Arizona Recreational Facilities to Lake Havasu City and the related amendments. Contract executed February 25, 2013.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

The Upper Colorado Region has no updates to report for this quarter.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

New contract actions:

47. Cornwell Ranch, Milk River Project, Montana: Enter into a new long-term Warren Act excess capacity contract for conveyance on nonproject water.

48. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Amend existing contract term for Round I and Round II contracts.

Modified contract actions:

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Proposed repayment contracts for the remaining water from the regulatory capacity of Ruedi Reservoir for irrigation and M&I use.

13. Roger W. Evans (Individual), Boysen Unit, P–SMBP, Wyoming: Renewal of long-term water service contracts.

14. Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming: Intent to enter into a long-term water service contract.

15. Hanover ID, Boysen Unit, P–SMBP, Wyoming: Intent to enter into a long-term water service contract with the District.

19. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of a request for a long-term contract for municipal-recreational purposes.

20. Northern Colorado Water Conservancy District, Colorado Big-Thompson Project, Colorado: Supplement to contract No. 9–07–70–W0020 to allow Northern Colorado Water Conservancy District to contract for delivery of 5,412.5 acre-feet of water annually out of Lake Granby to the 15-Mile Reach.

24. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Amend or supplement the 1938 repayment contract to include the transfer of operation, maintenance, and replacement for Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

30. Purgatoire Water Conservancy District, Trinidad Project, Colorado: Consideration of an amendatory contract.

Discontinued contract actions:

25. Miscellaneous water users in North Dakota and South Dakota: Intent to develop short- or long-term water service contracts for minor amounts of water to serve domestic needs at Reclamation reservoirs.

27. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of amendatory contract to address a change in timing of their repayment obligation.

31. Soldier Canyon Filter Plant, City of Fort Collins, City of Greeley, and Northern Colorado Water Conservancy District; Colorado-Big Thompson Project; Colorado: Consideration of temporary excess capacity contract(s) in Horsetooth Reservoir.

45. Helena Valley ID; Valley Unit, P–SMBP; Montana: Proposed contract amendment to allow the sale and delivery of excess water for miscellaneous purposes.

Completed contract actions:

12. Glendo Unit, P–SMBP, Wyoming: Intent to enter into a long-term excess capacity contract with Pacificorp. Contract executed February 27, 2013.

23. Scotty Phillip Cemetery, Mni-Wiconi Project, South Dakota: Consideration of a new long-term M&I water service contract. Contract executed October 16, 2012.

Dated: April 4, 2013.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2013–11074 Filed 5–8–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On April 23, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Iowa in the lawsuit entitled *United States* v. *Beef Products Inc.*, Civil Action No. 6:13–cv–02031 [Dkt. #2].

In this action the United States seeks civil penalties against Beef Products, Inc. ("BPI") in connection with BPI's system of storing and using anhydrous ammonia at its meat processing facility in Waterloo, Iowa (the "Waterloo Facility"), in violation of Section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. 7412(r)(7), and at BPI's meat processing facility in South Sioux City, Nebraska ("South Sioux City Facility"), in violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603(a). The proposed consent decree requires BPI to retain an independent third party expert to conduct extensive compliance audits at its South Sioux City Facility, as well as its Waterloo Facility and its meat processing facility in Holcomb, Kansas, if they reopen. BPI will also pay a civil penalty of $450,000 to the United States.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Beef Products, Inc.*, D.J. Ref. No. 90–5–2–1–10504. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–11014 Filed 5–8–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Amended Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 3, 2013, the Department of Justice lodged a proposed First Amended Consent Decree with the United States District Court for the Central District of California in the lawsuit entitled *United States and the State of California* v. *Texaco Inc.*, Civil Action No. CV–93–2990–JSL (SHx), with respect to the Pacific Coast Pipeline Superfund Site in Fillmore, California (the "Site").

On May 3, 2013, the United States, the State of California, and Defendant filed a joint stipulation to amend the Consent Decree that was entered by the Court on August 11, 1993. The U.S. Environmental Protection Agency ("EPA") determined that the groundwater remedy set forth in EPA's Record of Decision ("ROD") issued on March 31, 1992, was not successful in achieving the goal of reducing groundwater contaminant levels below drinking water standards and did not address shallow soil contamination at the Site. On September 29, 2011, EPA issued an Amendment to the ROD to address soil and groundwater contamination at the Site. The proposed First Amended Consent Decree amends the Consent Decree to include work required to implement the remedy as set forth in EPA's Statement of Work for Remedial Design and Remedial Action (RD/RA) for Soil and Groundwater, which is attached as Appendix F to the First Amended Consent Decree.

The publication of this notice opens a period for public comment on the First Amended Consent Decree. Comments

should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of California* v. *Texaco Inc.*, D.J. Ref. 90–11–2–840. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the First Amended Consent Decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the First Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.00 (without appendices) or $69.00 (with appendices) (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–10989 Filed 5–8–13; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection; Request for Public Comments

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on a revision of an approved information form (SF–SAC) that is used to report audit results, audit findings, and questioned costs as required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501, *et seq.*) and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

The proposed changes are to revise some existing data elements in the form and add other data elements that would make easier for the Federal agencies to identify the types of audit findings reported in the audits performed under the Single Audit Act. The current Form SF–SAC was designed for audit periods ending in 2011and 2012. The proposed revised Form SF–SAC will replace the current form for audit periods ending 2013, 2014 and 2015. The detail proposed changes along with the proposed format are described on OMB Web site at: *http://www.whitehouse.gov/omb/grants_forms/*

DATES: Submit comments on or before July 8, 2013. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date.

Electronic mail comments may be submitted to: Gilbert Tran at *hai_m._tran@omb.eop.gov.* Please include "Form SF–SAC 2013 Comments" in the subject line and the full body of your comments in the text of the electronic message, not as an attachment. Please include your name, title, organization, postal address, telephone number and email address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3052. The proposed revisions to the Information Collection Form, Form SF–SAC can be obtained by contacting the Office of Federal Financial Management as indicated above or by download from the OMB Grants Management home page on the Internet at *http://www.whitehouse.gov/omb/grants_forms/.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No.: SF–SAC.

Type of Review: Revision of a currently approved collection

Respondents: States, local governments, non-profit organizations (Non-Federal entities) and their auditors.

Estimated Number of Respondents: 76,000 (38,000 from auditors and 38,000 from auditees). The respondents' information is collected by the Federal Audit Clearinghouse (maintained by the U.S. Bureau of the Census).

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 75,600 small respondents for estimated annual burden hours of 1,308,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–SAC to create a government-wide database, which contains information on audit results. This database is publicly accessible on the Internet at *http://harvester.census.gov/fac/.* It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the Government Accountability Office, OMB and the general public for management of and information about Federal awards and the results of audits. 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 shall have practical utility; (b) the accuracy of the 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 of the collection of information on those who respond, including through the use of

automated collection techniques or other forms of information technology.

Norman S. Dong,

Deputy Controller.

[FR Doc. 2013–10993 Filed 5–8–13: 8:45 am]

BILLING CODE 3110–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: Antarctic Conservation Act Application Permit Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by July 8, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: "Antarctic Conservation Act Application Permit Form."

OMB Approval Number: 3145–0034.

Expiration Date of Approval: August 31, 2013.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird.

Use of the Information

The purpose of the regulations (45 CFR 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 45 minutes per response; this computes to approximately 11.25 hours annually.

Dated: May 6, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–11012 Filed 5–8–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362; NRC–2013–0083]

Southern California Edison, San Onofre Nuclear Generating Station, Units 2 and 3 Request for Action

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated June 18, 2012, Friends of the Earth (FOE, the petitioner) has requested that the NRC take action with regard to the San Onofre Nuclear Generating Station. The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2013–0083 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 the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0083. 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.
- *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.

SUPPLEMENTARY INFORMATION: On June 18, 2012 (ADAMS Accession No. ML12171A409), the petitioner requested that the NRC take action with regard to San Onofre Nuclear Generating Station, Units 2 and 3. The petitioner supplemented its petition on November 16, 2012 (ADAMS Accession No. ML12325A748). The petitioner met with the Petition Review Board (PRB) on January 16, 2013, to discuss the petition, and supplemented its petition on February 6, 2013 (ADAMS Accession No. ML13109A075). On February 12, 2013 (ADAMS Accession No. ML13116A265), FOE requested that Mitsubishi Heavy Industries' Report entitled *Root Cause Analysis Report for tube wear identified in the Unit 2 and Unit 3 Steam Generators at San Onofre Generating Station* and other specified documents be considered in the PRB's evaluation of the petition. The petitioner requests that the NRC order Southern California Edison (SCE) to

submit a license amendment application for the design and installation of the replacement steam generators. The petitioner also requests that the NRC suspend the licenses for Units 2 and 3, until they are amended.

As the basis for this request, the petitioner states that SCE violated Title 10 of the *Code of Federal Regulations* (10 CFR) 50.59 when it replaced its steam generators in 2010 and 2011 without first obtaining NRC approval of the design changes via a license amendment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time.

Further, FOE submitted on April 4, 2013, a cover letter and technical review entitled *Review of Tube Wear Identified in the San Onofre Replacement Steam Generators—Mitsubishi Reports UES–20120254 Rev.0 (3/64) and L5–04GA588(0) together with Other Relevant Information* conducted by Large & Associates, Consulting Engineers retained by FOE (ADAMS Accession No. ML13116A266 and ML13116A267, respectively). The PRB will also consider the safety significance and complexity of this information and determine if the information should be consolidated with the existing petition, or if it will be treated as a new petition.

A copy of the transcript of the January 16, 2013, meeting is available at ADAMS Accession No. ML13029A643.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30th day of April 2013.

Daniel H. Dorman,

Deputy Director for Engineering and Corporate Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–11036 Filed 5–8–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69513; File Nos. SR–NYSE–2013–08; SR–NYSEMKT–2013–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting Approval to Proposed Rule Changes Amending the Attestation Requirement of Rule 107C (NYSE) and 107C—Equities (NYSE MKT) To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Liquidity Program Will Qualify as "Retail Orders"

May 3, 2013.

I. Introduction

On January 17, 2013, the New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT" and together with NYSE, the "Exchanges") each 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] proposed rule changes to allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Exchanges' respective Retail Liquidity Programs ("Programs") qualify as "Retail Orders." The proposed rule changes were published for comment in the **Federal Register** on February 4, 2013.[3] The Commission received one comment on the proposals.[4] On March 20, 2013, the Commission extended the time for Commission action on the proposed rule changes until May 5, 2013.[5] The Exchanges submitted a response to the comment letter on April 2, 2013.[6] This order approves the proposed rule changes.

II. Description of the Proposals

The Exchanges began operating their respective Programs after they were approved by the Commission on a pilot basis in July, 2012.[7] Under the current rules, a member organization that wishes to participate in the Programs as an 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 Rule 107C.[9]

The proposals seek to lessen the attestation requirements of RMOs that submit "Retail Orders" eligible to receive potential price improvement through participation in the Programs. Specifically, the Exchanges propose to amend Rule 107C (NYSE) and 107C—Equities (NYSE MKT) 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 107C.

The Exchanges represented that they believe the categorical nature of the current "any order" attestation requirement is preventing certain member organizations with retail customer business from participating in the Programs. According to the Exchanges, some of these member organizations that wish to participate in the Programs represent both "Retail Orders," as defined in Rule 107C(a)(3), as well as other agency flow that may not meet the strict definition of "Retail Order." The Exchanges understand 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 Exchanges believe that some member organizations choose 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 Exchanges clarified in their proposals that the "substantially all" standard is meant to allow only *de minimis* amounts of orders to participate in the Programs that do not meet the definition of a Retail Order in Rule 107C and that cannot be segregated from bona fide Retail Orders due to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 68747 (Jan. 28, 2013), 78 FR 7824 (SR–NYSE–2013–08); and 68746 (Jan. 28, 2013), 78 FR 7842 (SR–NYSEMKT–2013–07).

[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. 69187, 78 FR 18402 (March 26, 2013).

[6] *See* Letter to the Commission from Janet McGinnis, General Counsel, NYSE Markets, dated April 2, 2013 ("Exchanges' Response Letter").

[7] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order").

[8] A Retail Order is defined in Rule 107C(a)(3) as "an agency order or a riskless principal 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."

[9] Given that the rules governing the NYSE and NYSE MKT Retail Liquidity Programs are virtually identical, and that the rationale for the adoption of the proposed rule text is the same, references to the text of NYSE Rule 107C in this order and the rationale for its adoption, unless otherwise noted, apply equally to NYSE MKT Rule 107C—Equities.

systems limitations. Under the proposals, the Exchanges 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.[10]

III. Comment Letters and the Exchanges' Responses

The Commission received one comment on the proposals. The comment letter expressed concern over the proposed "substantially all" attestation requirement primarily for four reasons.

First, the comment letter questioned whether the proposals would undermine the rationale on which the Commission approved the Retail Liquidity Programs. According to the commenter, when the Commission granted approval to the Programs, along with exemptive relief in connection with the operation of the Programs, it did so with the understanding that the Programs would service "only" retail order flow. To the extent the proposals would potentially allow non-Retail Orders to receive price improvement in the Programs, the commenter suggested that the Commission should reexamine its rationale for granting the exemptive relief relating to the Programs.

In response, the Exchanges noted that the proposed amendments are designed to permit isolated and *de minimis* quantities of agency orders that do not qualify as Retail Orders to participate in the Programs, because such orders cannot be segregated from Retail Orders due to systems limitations. The Exchanges also noted that several significant retail brokers choose not to participate in the Programs 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 Programs. Additionally, the Exchanges note that the Programs are designed to replicate the existing practices of broker-dealers that internalize much of the market's retail order flow off-exchange, and that the Programs, as modified by the "substantially all" proposals, would offer a competitive and more transparent alternative to internalization.

Second, the commenter expressed its belief that the Exchanges 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 Exchanges' proposals are 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 Exchanges 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 Exchanges, these retail brokers have chosen not to direct any of their significant shares of retail order flow to the Programs because the cost of complying with the current "any order" standard, such as implementing any necessary systems changes, is too high. The Exchanges 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 Exchanges 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 Exchanges' 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 Programs. The commenter suggested that, should the Commission approve the proposals, it should first establish a bright-line rule to define what constitutes "substantially all" retail order flow.[11]

The Exchanges responded that the proposals represent only a modest modification of the attestation requirement. In this respect, the Exchanges noted that the proposals would permit only isolated and *de minimis* quantities of agency orders to participate in the Programs 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 Exchanges 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 proposals may cause an exponential increase in monitoring and recordkeeping burdens associated with the Programs. The commenter expressed its belief that it could be especially difficult for the Exchanges 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 Exchanges monitoring their respective Programs might increase the likelihood that members may be subject to unfair discrimination in the Programs' approval and disqualification process.

In response, the Exchanges note that they will issue Trader Alerts to provide clear guidance on how the "substantially all" standard will be implemented and monitored. The Exchanges also noted that the Programs are designed to attract as much retail order flow as possible, and that, should RMOs begin submitting substantial amounts of non-retail order flow, Retail Liquidity Providers would become less willing to participate in the Programs. Finally, the Exchanges disagreed with the commenter's statement that a standard that provides a *de minimis* number of exceptions would be any harder to enforce than an standard that permitted no exceptions.

IV. Discussion and Commission Findings

After careful review of the proposals, the comment letter received, and the Exchanges' response, the Commission

[10] The Exchanges note that the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchanges, will review a member organization's compliance with these requirements.

[11] 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%."

finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[13] 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 Programs' current RMO attestation requirements that does not constitute a significant departure from the Programs as initially approved by the Commission.[14] The proposals make 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.[15] Furthermore, as the Exchanges note, 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 Exchanges 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 Exchanges. The Commission also notes that FINRA will monitor an RMO's compliance with this requirement.

Additionally, the Commission finds that the Exchanges have provided adequate justification for the proposals. The Exchanges 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 Exchanges 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 Programs, the proposals could bring the potential benefits of the Programs, including price improvement and increased transparency,[16] to the retail order flow that these brokers represent.[17]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rules changes (SR–NYSE–2013–08; SR–NYSEMKT–2013–07) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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[12] In approving the proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it approved the Programs on a pilot basis subject to ongoing Commission review.

[15] While the Commission recognizes the potential benefit of the commenter's suggestion concerning a bright-line definition of *de minimis*, *see supra* note 11, the Commission believes that, in light of the facts surrounding the instant proposals, the proposals, and the guidance that the Exchanges will provide to their 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.

[16] For a more detailed discussion of the Program's potential benefits, *see* RLP Approval Order, *supra* note 7.

[17] The commenter also expressed concern that this proposal may increase the burden upon the Exchanges in monitoring compliance with the Programs. The Commission finds that any potential concerns raised by this assertion, which are disputed by the Exchanges, are outweighed by the potential benefits of the proposals; namely, that the proposals may allow more retail orders the opportunity to participate in the Programs and receive the attendant benefits of the Programs. 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 Programs, the Commission notes that it previously found that the Programs' provisions concerning the certification, approval, and potential disqualification of RMOs and Retail Liquidity Providers are not inconsistent with the Act. *See* RLP Approval Order, *supra* note 7.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69512; File No. SR–BOX–2013–23]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Provide for the Manner in Which Mini Options Will Trade as a Complex Order Pursuant to BOX Rule 7240

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7240 (Complex Orders). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the manner in which Mini Options will trade as a Complex Order pursuant to BOX Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

7240. The Exchange previously filed to list and trade Mini Options.[3] Whereas standard options contracts represent a deliverable of 100 shares of an underlying security, Mini Options contracts represent a deliverable of 10 shares. Except for the difference in the number of deliverable shares, Mini Options have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. Accordingly, the Exchange noted in its Mini Options filing that Exchange rules that apply to the trading of standard options contracts would apply to Mini Option contracts as well.[4]

Prior to the launch of its new Complex Order Book,[5] the Exchange proposes to amend Rule 7240 (Complex Orders) to provide that while Participants may execute complex orders involving Mini Options, if any leg of a complex order is a Mini Option contract, all options legs of such orders must also be Mini Option contracts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 investors and other market participants would benefit from the current rule proposal because it provides that market participants may take advantage of legitimate investment strategies and execute complex orders involving Mini Options. Additionally, the Exchange believes the proposed rule change will avoid investor confusion by providing how Mini Options will trade as compared to standard options with respect to Complex Orders.

The Exchange's proposal to permit Mini Options to trade as Complex Orders provided the strategy does not combine Mini Options and standard options serves to maintain the permissible ratios that are applicable to Complex Orders by separating the trading of standard Complex Orders and Mini Options Complex Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All Participants may transact Complex Orders on BOX. The rule change does not permit unfair discrimination and does not impose a burden on Participants with respect to trading Mini Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) of the Act[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii) of the Act,[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In January 2013, the Exchange filed a proposed rule change to amend its rules to list and trade certain mini-options contracts on the Exchange, and represented in that filing that the Exchange's rules that apply to the trading of standard options contracts would apply to mini-options contracts.[12] The Exchange has represented that it intends to launch its new complex order book, on which mini-options contracts may trade as components of complex orders, on May 3, 2013. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would minimize confusion among market participants about how complex orders involving mini-options contracts will trade.[13]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to implement the proposed rule change prior to the launch of its new complex order book on May 3, 2013, thereby mitigating potential investor confusion as to how complex orders involving mini-options contracts will trade. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[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 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.

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[3] *See* Securities Exchange Act Release No. 68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (Notice of Filing and Immediate Effectiveness of SR–BOX–2013–07). The Exchange began trading Mini Options on March 18, 2013.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (Approving SR–BOX–2013–01). The Exchange expects to launch its new Complex Order Book on May 3, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (SR–BOX–2013–07).

[13] *See* SR–BOX–2013–23, Item 7.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BOX–2013–23 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–BOX–2013–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–23, and should be submitted on or before May 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69505; File No. SR–EDGA–2013–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0002 per share for Members' orders that yield Flag BY, which routes to BATS BYX ("BYX") and removes liquidity using routing strategies ROUC, ROUE, ROBY, ROBB or ROCO.[4] The Exchange proposes to amend its fee schedule to increase the rebate it provides Members from $0.0002 per share to $0.0005 per share for Flag BY. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker-dealer, is rebated for adding an average volume of 50,000 shares per day on BYX.[5] DE Route passes through the rebate to the Exchange and the Exchange, in turn, passes through the rebate to its Members. The Exchange notes that the proposed change is in response to BYX's April 2013 fee filing with the Commission, wherein BYX increased the rate it rebates its customers, such as DE Route, from $0.0002 per share to a rebate of $0.0005 per share for orders that are routed to BYX and add a daily volume of at least 50,000 shares and remove liquidity.[6]

In securities priced at $1.00 or above, the Exchange currently assesses a charge of $0.0005 per share for Members' orders that yield Flag RY, which routes to BYX and adds liquidity. The Exchange proposes to amend its fee schedule to increase the rate it charges Members from $0.0005 per share to $0.0007 per share for Flag RY. The proposed change represents a pass through of the rate that DE Route is charged for routing orders to BYX that do not qualify for additional volume tiered discounts.[7] DE Route passes through the charge to the Exchange and the Exchange, in turn, passes through the charge to its Members. The Exchange notes that the proposed change is in response to BYX's April 2013 fee filing with the Commission,

[4] As defined in Exchange Rule 11.9(b)(2).

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag BY will not change.

[6] *See* Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR–BYX–2013–012) (amending the rebate BYX provides for removing liquidity from the BYX order book for executions by members that add a daily average volume of at least 50,000 shares from $0.0002 per share to $0.0005 per share).

[7] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag RY will not change.

wherein BYX increased the rate it charges its customers, such as DE Route, from a charge of $0.0005 per share to a charge of $0.0007 per share for orders that are routed to BYX and add liquidity.[8]

The Exchange proposes to implement these amendments to its fee schedule on May 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to pass through the increased rebate of $0.0005 per share for Members' orders that yield Flag BY represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BYX through DE Route. Prior to BYX's April 2013 fee filing, BYX provided DE Route a rebate of $ 0.0002 per share for orders yielding Flag BY, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In BYX's April 2013 fee filing, BYX increased the rebate it provides its customers, such as DE Route, from $0.0002 per share to a rebate of $0.0005 per share for orders that are routed to BYX and remove liquidity.[11] Therefore, the Exchange's proposal allows the Exchange to continue to provide its Members a pass-through rate for orders that are routed to BYX and remove liquidity through DE Route. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to pass through a charge of $0.0007 for Members' orders that yield Flag RY represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BYX through DE Route. Prior to BYX's April 2013 fee filing, BYX charged DE Route a fee of $ 0.0005 per share for orders yielding Flag RY, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In BYX's April 2013 fee filing, BYX increased the rate it charges its customers, such as DE Route, from $0.0005 per share to a charge of $0.0007 per share for orders that are routed to BYX and add liquidity. Therefore, the Exchange believes that the proposed change in Flag RY from a fee of $0.0005 per share to a fee of $0.0007 per share is equitable and reasonable because it accounts for the pricing changes on BYX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BYX and add liquidity using DE Route. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange believes that the proposed changes would not impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that its proposal to pass through a rebate of $0.0005 per share for Members' orders that yield Flag BY would increase intermarket competition because it offers customers an alternative means to route to BYX and remove liquidity for the same price as entering orders on BYX directly. The Exchange believes its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that its proposal to pass through a charge of $0.0007 per share for Members' orders that yield Flag RY would increase intermarket competition because it offers customers an alternative means to route to BYX and add liquidity for the same price as entering orders on BYX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that its proposal would increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–EDGA–2013–12 *on the subject line.*

[8] *See* Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR–BYX–2013–012) (amending the rate BYX charges for adding displayed liquidity to the BYX order book for executions by members that do not qualify for a reduced charge from $0.0005 per share to $0.0007 per share).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR–BYX–2013–012) (amending the rebate BYX provides for removing liquidity from the BYX order book for executions by members that add a daily average volume of at least 50,000 shares from $0.0002 per share to $0.0005 per share).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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–EDGA–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–12 and should be submitted on or before May 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11018 Filed 5–8–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69508; File No. SR–NYSEArca–2013–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Implement a One-Year Pilot Program for Issuers of Certain Exchange-Traded Products ("ETPs") Listed on the Exchange

May 3, 2013.

On March 21, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("SEC" or "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 implement a one-year pilot program for issuers of certain exchange-traded products ("ETPs") listed on the Exchange. On April 5, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 11, 2013.[3] The Commission received two comment letters on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comments received, and any response to the comments submitted by the Exchange. The proposed rule change would, among other things, create a one-year pilot program, the NYSE Arca ETP Incentive Program, for issuers of certain ETPs listed on the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates June 17, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2013–34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11019 Filed 5–8–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69335 (Apr. 5, 2013), 78 FR 21681.

[4] *See* Letter from John T. Hyland, Chief Investment Officer, United States Commodity Funds LLC, dated Apr. 10, 2013, and Letter from Stanislav Dolgopolov, Assistant Adjunct Professor, UCLA School of Law, dated Apr. 26, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69509; File No. SR–Phlx–2013–44]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Remote Streaming Quote Trader Fees and Reference a Remote Streaming Quote Trader Organization

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 29, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule to update the Preface section of the Pricing Schedule and Section VI, Part C to update references to Remote Streaming Quote Traders or RSQTs.

The text of the proposed rule change is available on the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended various Exchange Rules to establish that member organizations may qualify to be Remote Streaming Quote Traders Organizations ("RSQTOs") with as many as three affiliated RSQTs.[3] RSQTs are, along with Specialists,[4] one of several types of Registered Option Traders ("ROTs")[5] on the Exchange. SR–Phlx–2013–03 amended Rules 507 and 1014 to define an RSQTO, which may also be referred to as Remote Market Maker Organizations ("RMOs").[6] An RSQTO is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). Amended Rule 507(a) provides that ". . . [a]s many as three RSQTs at any time may be identified by and affiliated with an RSQTO. Each of the affiliated RSQTs must be qualified as an ROT and must be in good standing."[7]

The Exchange is proposing to amend a reference in the Preface to the Pricing Schedule to reflect recent amendments to Exchange Rule 1014(b)(ii)(B).[8] Pursuant to the recent rule change, an RSQT is a member affiliated with an RSQTO. The member organization is the RSQTO with which as many as three RSQTs may be affiliated. The Exchange proposes to amend note 6 in the Preface to reflect that change and to also add language to that note to state that an RSQTO, which may also be referred to as an RMO, is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

The Exchange also proposes to change references to the Remote Streaming Trader Fee in Section VI, entitled "Membership Fees," at Part C from "RSQTs" to "RSQTOs." This fee is assessed to the member organization and not the individual member. In order to continue to assess the member organization, as is the case today, the Exchange is proposing to update the Pricing Schedule to properly reflect the reference to the fee for RSQTOs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposal to amend the Preface and Section VI, Part C of the Pricing Schedule to amend references from RSQT to RSQTO and redefine an RSQT in accordance with recent amendments to Rule 1014(b)(ii)(B) is reasonable because the Exchange is seeking to reflect the introduction of an RSQTO, which refers to the member organizations that must satisfy the requirements of Rule 507(a). Specifically, the Exchange is amending the Preface to identify the RSQTO and reference Rule 507(a) for purposes of defining RSQTOs. The Exchange is also amending the Preface to correctly refer to an RSQT as an individual for purposes of assessing fees. The amendment to Section IV also serves to properly identify RSQTOs and distinguish them from RSQTs. The Exchange believes that the amendments serve to properly reflect the distinction between RSQTs and RSQTOs to avoid confusion and reflect the correct permit holder that will be assessed certain fees. The Exchange also believes that the proposal is equitable and not unfairly discriminatory because the Exchange will continue to uniformly apply the new "RSQTO Fees" in the same manner as it does today, by assessing fees to the member organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not amend the manner in which current fees are assessed, but rather continues to assess remote streaming fees to the member organizations. The Exchange's proposal amends references to RSQTs and establishes the RSQTOs in the preface to distinguish individual members and member organizations to provide clarity to the Pricing Schedule and certainty with respect to billing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[3] An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an Registered Options Trader that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. *See* Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR–Phlx–2013–03) (a rule change which amended Phlx Rules 507 and 1014 to enable RSQTOs to affiliate with up to three RSQTs).

[4] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ROT includes a Streaming Quote Trader ("SQT"), a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii). Rule 1014 states that, in addition to other requirements, on a daily basis RSQTs and other SQTs are responsible to quote two-sided markets in not less than a specified percentage of options assigned by the Exchange at the request of such traders, unless specifically exempted from such quoting (market-making) responsibility.

[6] *See* Exchange Rule 507(a) and 1014(b)(ii)(B). *See* Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR–Phlx–2013–03). This filing became effective on April 19, 2013.

[7] *See* Rule 507(a).

[8] *See* Exchange Rule 507(a) and 1014(b)(ii)(B). *See* Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR–Phlx–2013–03).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(h)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–44. 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 Puhlic Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–44 and should be submitted on or before May 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11001 Filed 5–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69507; File No. SR–MIAX–2013–20]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow All Lead Market Makers To Receive Directed Orders

May 3, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to provide that an Electronic Exchange Member can designate a Lead Market Maker, regardless of appointment, on orders it enters into the System.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to provide that an Electronic Exchange Member ("EEM") can designate a Lead Market Maker ("LMM"), regardless of appointment, on orders it enters into the System. Currently, Rule 514(h) provides that a "Lead Market Maker must have an appointment in the relevant option class in order to receive a Directed Order in that option class." The Exchange proposes modifying that sentence so that it would apply to eligibility for the Directed Lead Market Maker ("DLMM") participation entitlement rather than the ability to be sent a Directed Order by an EEM. As proposed, the sentence would read: "[t]he Directed Lead Market Maker must have an appointment in the relevant option class at the time of receipt of the Directed Order to be eligible to receive the Directed Lead Market Maker participation entitlement." The proposal would allow an EEM to send a Directed Order to any LMMs—which includes both (i) LMMs with an appointment in the relevant option class and (ii) LMMs without an appointment in the relevant option class. The first group, LMMs with an appointment, represents no change from the current rule. The second group, however, would be a new addition to the current rule. This modification would preserve the current structure of reserving the DLMM participation entitlement for DLMMs with an appointment in the relevant option class, yet would allow an EEM to send a Directed Order to any LMM as consistent with the proposed language of Rule 100, described below.

The Exchange believes that allowing EEMs to direct orders to LMMs regardless of appointment promotes increased order flow to the Exchange while maintaining the existing appropriate balance between benefits and obligations regarding the DLMM participation entitlement. Directed Orders serve as a tool for LMMs to attract order flow to the exchange. An LMM without an appointment in an option class cannot quote in that option class and will therefore most likely never trade with a Directed Order sent to it in that option class. However, the LMM without an appointment can be incentivized to attract Directed Orders

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in such option classes through the collection of related marketing fees.[3] The increased order flow provided by these Directed Orders benefits Exchange market participants, such as customers with resting orders on the System and LMMs with an appointment in the relevant option class that can quote in the option. However, LMMs without an appointment in the relevant option class cannot partake in the DLMM participation entitlement. Instead, this benefit is reserved for LMMs appointed in the relevant option class, who must meet various quoting and other obligations not applicable to LMMs without an appointment in the relevant option class.[4] Additionally, pursuant to Rule 514(h)(1) the DLMM participation entitlement can only be earned, among other things, if the DLMM has a priority quote at the national best bid or offer.

The Exchange notes that several other options exchanges also have Directed Order programs.[5] The Chicago Board of Options Exchange, LLC ("CBOE"), for instance, operates its "Preferred Market-Maker Program" where members can designate a specific Market-Maker ("Preferred Market-Maker" or "PMM") on an order sent to CBOE.[6] CBOE allows the PMM to collect marketing fees, regardless of whether the PMM has an appointment in the relevant option class.[7] Finally, CBOE reserves its participation entitlement for PMMs with an appointment in the relevant option class quoting at the best bid or offer on the CBOE.[8] The Exchange believes that its proposal would allow the Exchange's Directed Order program to operate similar to and in a consistent manner as equivalent programs at the exchanges cited above.

The Exchange also proposes a technical change to relocate existing language found in 514(a) and (h) to the definition section in Rule 100. Specifically, the Exchange proposes adding "Directed Order" as a defined term in Rule 100. In Rule 100, "Directed Order" would be defined as "an order entered into the System by an Electronic Exchange Member with a designation for a Lead Market Maker (referred to as a "Directed Lead Market Maker"). Only Priority Customer Orders will be eligible to be entered into the System as a Directed Order by an Electronic Exchange Member." The Exchange proposes replacing the definition of "Directed Order" currently found in Rule 514(a) with a reference to the proposed Rule 100 definition. The language of the proposed Rule 100 definition contains a slight change from Rule 514(a) to reflect that an EEM technically "enters" a Directed Order into the Exchange System rather than "routes" such a Directed Order.

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in a Regulatory Circular to be published no later than 30 days after the publication of the notice in the **Federal Register**. The implementation date will be no later than 30 days following publication of the Regulatory Circular announcing publication of the notice in the **Federal Register**.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Exchange believes that this proposal removes a requirement that other exchanges do not share and perfects the mechanism for a free and open market and a national market system by allowing the Exchange's Directed Order program to operate in a manner similar to competing options exchanges.

The Exchange believes that allowing LMMs without an appointment in the relevant option class to be sent Directed Orders promotes just and equitable principles of trade because such LMMs have provided a valued service to the Exchange through their appointment in other options traded on the Exchange in a manner that protects investors and the public interest. In other options classes, these LMMs have met additional quoting and other regulatory obligations compared to other Exchange participants and have thus demonstrated a commitment to providing liquidity on the Exchange. The proposal preserves the benefit of the DLMM participation entitlement to LMMs who have an appointment in the relevant option class and must therefore satisfy additional quoting and other obligations not faced by Market Makers in the relevant class and LMMs without an appointment in the relevant class. The Exchange believes that satisfying such additional quoting and other obligations balances the benefit of the DLMM participation entitlement and justifies limiting the DLMM participation entitlement to LMMs with an appointment in the relevant option class.

Finally, the Exchange believes the proposal will encourage greater order flow to be sent to the Exchange through Directed Orders and that this increased order flow will benefit all market participants on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that allowing EEMs to be able to direct orders to all LMMs will increase order flow and liquidity for all market participants on the Exchange. The Exchange believes that limiting the class of market participants that can be directed orders to LMMs to be fair and reasonable because LMMs provided a valued service to the Exchange through their appointment in options traded on the Exchange. LMMs meet additional quoting and other regulatory obligations compared to other Exchange participants and have thus demonstrated a commitment to providing liquidity on the Exchange. The Exchange believes that limiting the benefit of the DLMM participation entitlement to DLMMs who have an appointment in the relevant option class

[3] *See* Securities Exchange Act Release No. 68131 (November 1, 2012), 77 FR 67032 (November 8, 2012) (SR–CBOE–2012–101) in which CBOE amended its Fees Schedule to allow PMMs to access marketing fees generated from Preferred Orders (its equivalent of Directed Orders), regardless of whether the order is for a class in which the PMM has an appointment. The Exchange notes that this proposal is limited to changes to Rule 514 only and not the Exchange's Fee Schedule, which will be addressed in a separate filing.

[4] *See* Exchange Rule 603 (Obligations of Market Makers) and Rule 604 (Market Maker Quotations).

[5] *See* Chicago Board of Options Exchange, LLC Rule 8.13; NASDAQ OMX Phlx, LLC Rule 1080(l); NYSE Amex Options Rule 964.1NY; International Securities Exchange, LLC Rule 811.

[6] *See* CBOE Rule 8.13 (Preferred Market-Maker Program).

[7] *See* CBOE Fees Schedule, table entitled "Marketing Fee" and Footnote 6 for more details regarding the marketing fee. *See also* Securities Exchange Act Release No. 68131 (November 1, 2012), 77 FR 67032 (November 8, 2012) (SR–CBOE–2012–101) in which CBOE amended its Fees Schedule to allow PMMs to access marketing fees generated from Preferred Orders (which are similar to Directed Orders), regardless of whether the order is for a class in which the PMM has an appointment.

[8] *See* CBOE Rule 8.13(b).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

to be fair and reasonable because these DLMMs satisfy additional quoting and other obligations in the specific option class not faced by either Market Makers in the relevant class or DLMMs without an appointment in the relevant class. The Exchange believes that satisfying additional quoting and other obligations balances the benefit of the DLMM participation entitlement and justifies limiting it to DLMMs with an appointment in the relevant option class. The Exchange notes that such a limitation on the DLMM participation is not new to this proposal, but is a continuation of the current operation of Rule 514(h).

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. Many competing venues offer similar functionality to market participants. To this end, the Exchange is proposing a market enhancement to encourage market participants to trade on the Exchange. The Exchange believes the proposed rule change is procompetitive because it would enable the Exchange to provide member organizations with functionality that is similar to that of other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MIAX–2013–20 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–MIAX–2013–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–20 and should be submitted on or before May 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11000 Filed 5–8–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69511; File No. SR–BOX–2013–06

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Granting Approval of Proposed Rule Change To List and Trade Option Contracts Overlying 1,000 Shares of the SPDR S&P 500 Exchange-Traded Fund

May 3, 2013.

I. Introduction

On January 18, 2013, BOX Options Exchange LLC ("Exchange" or "BOX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 1,000 shares of the SPDR S&P 500 Exchange-Traded Fund ("Jumbo SPY Options"). The proposed rule change was published for comment in the **Federal Register** on February 4, 2013.[3] The Commission initially received two comment letters on the proposed rule change.[4] On March 20, 2013, the Commission extended the time period for Commission action to May 5, 2013.[5] The Commission subsequently received one additional comment letter on the proposed rule change.[6] On April 19, 2013, BOX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68759 (January 29, 2013), 78 FR 7835 ("Notice").

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext ("NYSE"), dated February 25, 2013 ("NYSE Letter") and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated ("CBOE"), dated February 25, 2013 ("CBOE Letter").

[5] *See* Securities Exchange Act Release No. 69193, 78 FR 18403 (March 26, 2013).

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX Group, Inc. ("Nasdaq"), dated March 21, 2013 ("Nasdaq Letter").

submitted a response to the comment letters.[7] This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Jumbo SPY Options, which are option contracts that overlie 1,000 SPDR S&P 500 Exchange-Traded Fund ("SPY") shares. Under the Exchange's proposal, Jumbo SPY Options would be assigned different trading symbols (SPYJ) than the corresponding standard options on SPY.[8] In addition, the Exchange proposes to list Jumbo SPY Options for all expirations applicable to standard options on SPY,[9] and proposes that strike prices for Jumbo SPY Options be set at the same level as standard options on SPY.[10] Bids and offers for Jumbo SPY Options would be expressed in terms of dollars per 1/1000th part of the total value of the options contract.[11] The table below, which was included by the Exchange in its filing, demonstrates the proposed differences between a Jumbo SPY Option and a standard SPY option with a strike price of $45 per share and a bid or offer of $3.20 per share:

	Standard	Jumbo
Shares Deliverable Upon Exercise	100 shares	1,000 shares.
Strike Price	45	45.
Bid or Offer	3.20	3.20.
Premium Multiplier	$100	$1,000.
Total Value of Deliverable	$4,500	$45,000.
Total Value of Contract	$320	$3,200.

The Exchange states that it has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of Jumbo SPY Options.[12]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] 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 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. Commenters raised and the Exchange addressed in its response several issues related to the proposal, which are discussed below.

All three commenters express concern that the proposal did not specify the minimum price variation that would be applicable to Jumbo SPY Options and that market participants could not understand how this new product would trade without this information.[15] In particular, NYSE expresses concern that if BOX imposes a higher minimum price variation for Jumbo SPY Options as compared to existing SPY options, the marketplace would have no ability to provide tight and competitive markets in Jumbo SPY Options, using standard SPY options as a reference.[16] Similarly, Nasdaq also questions the merit of BOX's conclusion that because of the liquidity in SPY and options on SPY, existing market forces should keep the prices between standard SPY options and Jumbo SPY Options consistent.[17]

NYSE and Nasdaq also state that the proposal fails to discuss Jumbo SPY Options in the context of BOX's price improvement process ("PIP").[18] NYSE further states that if Jumbo SPY Options would be eligible for the PIP, a different minimum price variation would be of even greater concern.[19] In addition, NYSE points out that the proposal does not discuss the treatment of Jumbo SPY Options for purposes of complex orders, market maker appointments, and market maker quoting obligations.[20] Lastly, CBOE states that the proposal fails to state whether BOX's existing fee schedule will apply to Jumbo SPY Options.[21]

In its response letter, BOX states that it will file a rule change before the launch of Jumbo SPY Options to provide that the minimum price variation for Jumbo SPY Options will be the same as the minimum price variation for standard options on SPY (*i.e.*, penny increments).[22] BOX also states that it will file a rule change before the launch of Jumbo SPY Options to provide additional details with respect to complex orders, PIP, minimum contract thresholds for solicitation and facilitation auctions, market maker appointments and obligations, and fees.[23]

Specifically, BOX notes that Jumbo SPY Options will interact with complex orders in the same manner as mini options.[24] Further, Jumbo SPY Options will be eligible for PIP auctions.[25] With respect to minimum contract thresholds in the solicitation and facilitation auctions, BOX will adjust the thresholds for Jumbo SPY Options to 1/10th of its current requirement for standard options.[26] With respect to market maker appointment and quoting obligations, Jumbo SPY Options will be treated in the same manner as mini options.[27] Finally, BOX states that its current transaction fees will not apply to Jumbo SPY Options, and BOX will not commence trading of Jumbo SPY

[7] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Lisa J. Fall, President, BOX, dated April 19, 2013 ("BOX Response Letter").

[8] *See* Notice, *supra* note 3, at 7836.

[9] *See* BOX Rule 5050(e)(1).

[10] *See* BOX Rule 5050(e)(2).

[11] *See* BOX Rule 5050(e)(3).

[12] *See* Notice, *supra* note 3, at 7836. The Exchange also states that it has discussed the proposed listing and trading of Jumbo SPY Options with the Options Clearing Corporation ("OCC"), and the OCC has represented that it is able to accommodate Jumbo SPY Options. *See id.*

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* NYSE Letter, *supra* note 4, at 1–2; CBOE Letter, *supra* note 4, at 3; and Nasdaq Letter, *supra* note 6, at 2.

[16] *See* NYSE Letter, *supra* note 4, at 2.

[17] *See* Nasdaq Letter, *supra* note 6, at 2.

[18] *See* NYSE Letter, *supra* note 4, at 2 and Nasdaq Letter, *supra* note 6, at 2.

[19] *See* NYSE Letter, *supra* note 4, at 2–3.

[20] *See id.*, at 5.

[21] *See* CBOE Letter, *supra* note 4, at 4.

[22] *See* BOX Response Letter, *supra* note 7, at 1.

[23] *See id.*, at 3.

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

Options until specific fees have been filed with the Commission.[28]

NYSE argues that the proposal provides no explanation for why Jumbo SPY Options would make options on large blocks of the SPY ETF more available as an investing tool, particularly for institutional investors.[29] NYSE also states that, unlike mini options, Jumbo SPY Options do not enable any trade to take place that cannot already take place because an institutional investor looking to purchase 1,000 contracts of a given SPY option is already able to do so in the standard-sized SPY options market.[30] Nasdaq similarly comments that Jumbo SPY Options bring no benefits to investors or the market.[31]

In its response letter, BOX states its belief that Jumbo SPY Options would benefit investors by providing additional methods to trade highly liquid options on SPY and providing greater ability to hedge risk in managing larger portfolios.[32] BOX also states its belief that the market will decide the issue of whether or not Jumbo SPY Options add value, and that market participants may elect not to trade Jumbo SPY options if they find these options to not add value to the marketplace.[33] In addition, in its response letter, BOX represents that its current transaction fees will not apply to Jumbo SPY Options, and it will not commence trading of Jumbo SPY Options until specific fees have been filed with the Commission.[34] The Commission believes that the listing and trading of Jumbo SPY Options could benefit investors by providing them with an additional investment alternative. In addition, the Commission believes, as noted by BOX in the proposal, that the listing and trading of Jumbo SPY Options could benefit investors by providing another means to mitigate risk in managing large portfolios, particularly for institutional investors.[35]

All three commenters express concern that the proposal can cause investor confusion.[36] In its response letter, BOX states that it does not believe that the listing of a third product on SPY will lead to any more confusion than having two options on SPY.[37] BOX notes that Jumbo SPY Options will be designated with a different trading symbol (SPYJ).[38] BOX also states that the marketplace and investors have matured and become more sophisticated, and investors will easily be able to differentiate between standard, mini, and Jumbo SPY options.[39] The Commission agrees that the use of different trading symbols for Jumbo SPY Options should help investors and other market participants to distinguish those options from the corresponding standard and mini options. The Commission also believes that the proposed treatment of strike prices[40] and bids and offers[41] for Jumbo SPY Options is consistent with the Act, as these amendments should make clear how Jumbo SPY Options would be quoted and traded.

NYSE states that Jumbo SPY Options are designed specifically for large institutional investors and are generally too large for average retail investors and, thus, could create a two-tiered market for SPY options.[42] According to NYSE, today, when an institutional investor trades 10 standard SPY options, it helps to foster transparency and price discovery, which directly benefits retail investors.[43] NYSE expresses the concern that Jumbo SPY Options will likely result in some of the institutional activity migrating away from the standard SPY options, to the direct detriment of retail investors.[44] Similarly, CBOE argues that the potential for market fragmentation increases with each additional and different contract on a single security, even if that security is highly liquid with a well-established trading history.[45] Nasdaq also raises questions regarding the potential for a two-tiered market for SPY options and the impact of Jumbo SPY Options on the existing market for standard and mini SPY options.[46] Further, Nasdaq raises the question of whether Jumbo SPY Options could materially fragment liquidity and harm or weaken the price discovery process.[47]

In the case of the market for SPY options, BOX notes in its response letter that there generally exists a critical mass of willing buyers and sellers both for the options and for the underlying securities that mitigate the concerns raised by the commenters.[48] Specifically, BOX notes in its filing that standard options on SPY are currently the most actively traded options in terms of average daily volume.[49] Further, in its filing, BOX states its understanding that the OCC's portfolio margining process will be set to have positions in a standard contract and a jumbo contract set against each other, and that consistent cross margining will be available between standard and jumbo options.[50] BOX concludes that the availability of Jumbo SPY Options would likely result in more efficient pricing through arbitrage with standard SPY options.[51] In its response letter, BOX also states that the trading of Jumbo SPY Options has the potential of providing greater liquidity by providing increased opportunity for trading and, consequently, increasing price transparency by providing additional information to market participants.[52]

The Commission notes that price protection would not apply across standard and Jumbo SPY Options on an intramarket basis, as they are separate products. The Commission recognizes that trading different options products that overlie the same security could disperse trading interest across the products to some extent. In illiquid or nascent markets, increased dispersion across products may cause particular concern, as the markets for the separate products may lack the critical mass of buyers and sellers to allow such a market to become established or, once established, to thrive. The Commission believes that the high trading volume

[28] *See id.*

[29] *See* NYSE Letter, *supra* note 4, at 4.

[30] *See id.*

[31] *See* Nasdaq Letter, supra note 6, at 3.

[32] *See* BOX Response Letter, *supra* note 7, at 2.

[33] *See id.*

[34] *See id.*, at 3.

[35] *See* Notice, *supra* note 3, at 7836.

[36] *See* NYSE Letter, *supra* note 4, at 5–6; CBOE Letter, *supra* note 4, at 2–3; and Nasdaq Letter, *supra* note 6, at 1.

[37] *See* BOX Response Letter, *supra* note 7, at 1.

[38] *See id.*, at 2.

[39] *See id.*, at 1–2.

[40] *See* BOX Rule 5050(e)(2).

[41] *See* BOX Rule 5050(e)(3).

[42] *See* NYSE Letter, *supra* note 4, at 3–4.

[43] *See id.*, at 4.

[44] *See id.*

[45] *See* CBOE Letter, *supra* note 4, at 3.

[46] *See* Nasdaq Letter, *supra* note 6, at 2. *See also* CBOE Letter, *supra* note 4, at n.2 (commenting that the proposal does not reference the potential impact on the marketplace of having three different contracts trading concurrently on the same security) and 4 (stating that the introduction of several contracts on the same security with differing deliverable share amounts warrants an incremental and measured approach by the Commission and that the Commission should consider a studied analysis of the marketplace's reception to and any possible confusion that could result from having different contracts on the same security that expire on the same day and that deliver varying share amounts).

[47] *See* Nasdaq Letter, *supra* note 6, at 2.

[48] *See* BOX Response Letter, *supra* note 7, at 3.

[49] *See* Notice, *supra* note 3, at 7836. According to BOX, the average daily volume for SPY options was 2,156,482 contracts in April 2012. *See id.*, at n.5. The average daily volume for the same period for the next four most actively traded options was: Apple Inc.—1,074,351; S&P 500 Index—656,250; PowerShares QQQ Trust℠, Series 1—573,790; and iShares® Russell 2000® Index Fund—550,316. *See id. See also* OCC Exchange Volume by Class, available at *http://theocc.com/webapps/volbyclass-reports* (indicating that SPY options are currently the most actively traded options in terms of volume).

[50] *See id.*, at 7836.

[51] *See id.*

[52] *See* BOX Response Letter, *supra* note 7, at 3.

and liquidity in the market for SPY and SPY options should mitigate the market fragmentation and price protection concerns that commenters raised.[53] Moreover, the Commission notes that the proposal is limited to jumbo options on SPY and in order to expand the trading of jumbo options beyond those overlying SPY, BOX would be required to file new proposed rule changes with the Commission pursuant to Section 19(b) of the Act.[54] Proposals to expand jumbo options to cover other underlying securities that do not exhibit the depth and liquidity of the SPY and SPY options markets potentially could give rise to concern. Finally, the Commission expects BOX to monitor the trading of Jumbo SPY Options to evaluate whether any issues develop.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[55] to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that the Exchange's rules that apply to the trading of standard options would apply to Jumbo SPY Options. The Commission also notes that the Exchange's existing market maker quoting obligations would apply to Jumbo SPY Options.[56] In addition, the Commission notes that intermarket trade-through protection would apply to Jumbo SPY Options to the extent that they are traded on more than one market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change (SR–BOX–2013–06) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Kevin M. O'Neill,

Deputy Secretary.

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[53] *See* OCC Exchange Volume by Class, available at *http://theocc.com/webapps/volbycloss-reports* (indicating that SPY options are currently the most actively traded options in terms of volume).

[54] *See* Notice, *supra* note 3, at n.5.

[55] 15 U.S.C. 78f(b)(1).

[56] *See* BOX Rule 8050.

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69510; File No. SR–EDGX–2013–15]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0002 per share for Members' orders that yield Flag BY, which routes to BATS BYX ("BYX") and removes liquidity using routing strategies ROUC, ROUE, or ROBY.[4] The Exchange proposes to amend its fee schedule to assess no charge ("free") nor provide any rebate for Members' orders that yield Flag BY. When Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker-dealer, routes to BYX, it is rebated $0.0005 per share for adding an average daily volume of 50,000 shares per day on BYX.[5] However, DE Route will pass through the non-tiered rate on BYX (no fee nor rebate) to the Exchange and the Exchange, in turn, will pass through no fee nor rebate to its Members.[6]

In securities priced at $1.00 or above, the Exchange currently assesses a charge of $0.0005 per share for Members' orders that yield Flag RY, which routes to BYX and adds liquidity. The Exchange proposes to amend its fee schedule to increase the rate it charges Members from $0.0005 per share to $0.0007 per share for Flag RY. The proposed change represents a pass through of the rate that DE Route is charged for routing orders to BYX that do not qualify for additional volume tiered discounts.[7] DE Route passes through the charge to the Exchange and the Exchange, in turn, passes through the charge to its Members. The Exchange notes that the proposed change is in response to BYX's April 2013 fee filing with the Commission, wherein BYX increased the rate it charges its customers, such as DE Route, from a charge of $0.0005 per share to a charge of $0.0007 per share for orders

[4] As defined in Exchange Rule 11.9(b)(2).

[5] *See* Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR–BYX–2013–012) (amending the rebate BYX provides for removing liquidity from the BYX order book for executions by members that add a daily average volume of at least 50,000 shares from $0.0002 per share to $0.0005 per share).

[6] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag BY will not change. *See* BYX Fee Schedule, *http://cdn.botstrading.com/resources/regulotion/rule_book/BATS-Exchonges_Fee_Schedules.pdf* (offering no rebate to remove liquidity from BYX for executions by its members that do not qualify for an enhanced rebate).

[7] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag RY will not change.

that are routed to BYX and add liquidity.[8]

The Exchange proposes to implement these amendments to its fee schedule on May 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to decrease the rebate for Flag BY and pass through no charge nor rebate for Members' orders that yield Flag BY represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. First, the elimination of the rebate allows the Exchange to have additional revenue to offset its administrative, operational, and infrastructure costs. Second, the proposed rate (free) is competitive as it is in line with the non-tiered rebates for adding liquidity to BYX. When DE Route, the Exchange's affiliated routing broker-dealer, routes to BYX, it is rebated $0.0005 per share provided it adds an average daily volume of 50,000 shares per day on BYX. However, when DE Route does not meet such volume threshold on BYX, it is assessed no fee nor rebate (free). The proposed rate (free)[11] represents a rate that matches the non-tiered rate provided by BYX. The rate is also in line with what BATS Exchange, Inc. ("BZX") rebates for routing to BYX.[12] Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to pass through a charge of $0.0007 for Members' orders that yield Flag RY represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BYX through DE Route. Prior to BYX's April 2013 fee filing, BYX charged DE Route a fee of $ 0.0005 per share for orders yielding Flag RY, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In BYX's April 2013 fee filing, BYX increased the rate it charges its customers, such as DE Route, from $0.0005 per share to a charge of $0.0007 per share for orders that are routed to BYX and add liquidity. Therefore, the Exchange believes that the proposed change in Flag RY from a fee of $0.0005 per share to a fee of $0.0007 per share is equitable and reasonable because it accounts for the pricing changes on BYX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BYX and add liquidity using DE Route. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by any of the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange believes that the proposed changes would not impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that its proposal to pass through no charge nor rebate for Members' orders that yield Flag BY would not burden intermarket competition because the proposed rate is in line with BYX's non-tiered rate and rates for routing to BYX from BZX. Additionally, for customers that do not have sufficient volume to satisfy BYX's tier, Flag BY offers customers an alternative means to route to BYX and remove liquidity for the same price as entering orders on BYX directly. The Exchange believes its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that its proposal to pass through a charge of $0.0007 per share for Members' orders that yield Flag RY would increase intermarket competition because it offers customers an alternative means to route to BYX and add liquidity for the same price as entering orders on BYX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that its proposal would increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] See Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR–BYX–2013–012) (amending the rate BYX charges for adding displayed liquidity to the BYX order book for executions by members that do not qualify for a reduced charge from $0.0005 per share to $0.0007 per share).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] See BYX Fee Schedule, *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf* (offering no rebate to remove liquidity from BYX for executions by its members that do not qualify for an enhanced rebate).

[12] For example, when orders using BZX's TRIM/TRIM2/TRIM3 routing strategies execute at BYX Exchange, a rebate of $0.0002 per share is provided. This is a rate that is in between the tiered rebate of $0.0005 per share and non-tiered rate (free) from BYX. See BATS BZX Fee Schedule, *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4 (f)(2).

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–EDGX–2013–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–15 and should be submitted on or before May 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8315]

Culturally Significant Object Imported for Exhibition Determinations: "Goya's Two Hares"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Goya's Two Hares," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about May 18, 2013, until on or about May 31, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 3, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–11096 Filed 5–8–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8314]

Privacy Act; System of Records: Security Records, State-36

SUMMARY: Notice is hereby given that the Department of State proposes to amend an existing system of records, Security Records, State-36, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

DATES: This system of records will be effective on June 18, 2013, unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: The Department of State proposes that the current system retain the name "Security Records" (previously published as 72 FR 73057). The records maintained in State-36, Security Records, capture data related to incidents and threats affecting U.S. Government personnel, U.S. Government information, or U.S. Government facilities world-wide for a variety of legal purposes including Federal and state law enforcement and counterterrorism purposes. The information maintained in Security Records may also be used to determine general suitability for employment or retention in employment, to grant a contract or issue a license, grant, or security clearance. The proposed system will include modifications to all of the sections.

The Department's report was filed with the Office of Management and Budget. The amended system description, "Security Records, State–36," will read as set forth below.

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

STATE—36

SYSTEM NAME:

Security Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State and its annexes, Bureau of Diplomatic Security, various field and regional offices throughout the United States, and abroad at some U.S. embassies and U.S. consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of the Department of State; applicants for

Department employment who have been or are presently being investigated for security clearance; contractors working for the Department; interns and detailees to the Department; individuals requiring access to the Department of State premises who have undergone or are undergoing security clearance; foreign mission members, international organization employees, domestic and household members to include private servants, and other foreign government personnel and their dependents accredited to the United States; some passport and visa applicants concerning matters of adjudication; individuals involved in matters of passport and visa fraud; individuals involved in unauthorized access to classified information; prospective alien spouses of U.S. personnel of the Department of State; individuals or groups whose activities have a potential bearing on the security of Department or Foreign Service operations domestic and abroad including those involved in criminal or terrorist activity; suspects, victims, or witnesses associated with investigations into possible unlawful activity conducted by the Bureau of Diplomatic Security; visitors to the Department of State (the Harry S Truman Building), to its domestic annexes, field offices, missions, and to the U.S. embassies, consulates and missions abroad; and all other individuals requiring access to official Department of State premises who have undergone or are undergoing a security clearance. Other files include individuals issued security violations or infractions or cyber security violations or cyber security infractions; litigants in civil suits and criminal prosecutions of interest to the Bureau of Diplomatic Security; individuals who have Department building passes; uniformed security officers; individuals named in congressional inquiries to the Bureau of Diplomatic Security; individuals subject to investigations conducted on behalf of other Federal agencies; and individuals whose activities other agencies believe may have a bearing on U.S. foreign policy interests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident and investigatory material relating to any category of individual described above, including case files containing but not limited to items such as: general physical description (including height, weight, body type, hair, clothing, accent description, and other general and distinguishing physical features); identification media (such as passports, residency, or driver's license information); email address; family identifiers (such as names of relatives and biographic information); numeric identifiers (such as Social Security numbers (SSNs), Employee ID numbers, State Global ID numbers (SGID)); applications for passports, drivers' licenses, residency and employment; photographs; biometric data; birth certificates; credit checks; intelligence reports; security evaluations and clearances; other agency reports and informant reports; legal case pleadings and files; evidence materials collected during investigations; security violation files; training reports; administrative files related to the implementation of the Foreign Missions Act, provision of services and benefits; administrative files related to the notification of appointment, termination of appointment and dependent employment requests for foreign missions members, employees of international organizations, domestic and household members to include private servants, and other foreign government personnel and their dependents accredited to the United States (elements of this category of records are maintained also by the Department's Office of the Chief of Protocol); weapons assignment data base; firing proficiency and other security-related testing scores; availability for special protective assignments; language proficiency scores; intelligence reports; counterintelligence material; counterterrorism material; internal Departmental memoranda; internal personnel, fiscal, and other administrative documents, including employee applications for diplomatic passports and visas. For visitors: Name; date of birth; citizenship; ID type and ID number; temporary badge number; host's name; office symbol; room number, and telephone number. For all others: Name; date and place of birth; home address; employer and employer's address; badge number; home, cellular, and office telephone numbers; SSN; specific areas and times of authorized accessibility; escort authority; status and level of security clearance; issuing agency and issuance date. For all individuals: Date and times of entering and exiting Department buildings. Security files contain information needed to provide protective services for the Secretary of State, other designated U.S. officials, resident foreign officials and facilities, and visiting foreign dignitaries.

There are also information copies of investigations of individuals conducted abroad on behalf of other Federal Agencies. Security files also contain documents and reports furnished to the Department by other Federal Agencies concerning individuals whose activities these agencies believe may have a bearing on U.S. foreign policy interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 5 U.S.C. 301 (Management of Executive Agencies); (b) 5 U.S.C. 7311 (Suitability, Security, and Conduct); (c) 5 U.S.C. 7531–33 (Adverse Actions, Suspension and Removal, and Effect on Other Statutes); (d) 8 U.S.C. 1104 (Aliens and Nationality—passport and visa fraud investigations); (e) 18 U.S.C. 111 (Crimes and Criminal Procedures) (Assaulting, resisting, or impeding certain officers or employees); (f) 18 U.S.C. 112 (Protection of foreign officials, official guests, and internationally protected persons); (g) 18 U.S.C. 201 (Bribery of public officials and witnesses); (h) 18 U.S.C. 202 (Bribery, Graft, and Conflicts of Interest-Definitions); (i) 18 U.S.C. 1114 (Protection of officers and employees of the U.S.); (j) 18 U.S.C. 1116 (Murder or manslaughter of foreign officials, official guests, or internationally protected persons); (k) 18 U.S.C. 1117 (Conspiracy to murder); (l) 18 U.S.C. 1541–1546 (Issuance without authority, false statement in application and use of passport, forgery or false use of passport, misuse of passport, safe conduct violation, fraud and misuse of visas, permits, and other documents); (m) 22 U.S.C. 211a (Foreign Relations and Intercourse) (Authority to grant, issue, and verify passports); (n) 22 U.S.C. 842, 846, 911 (Duties of Officers and Employees and Foreign Service Officers) (Repealed, but applicable to past records); (o) 22 U.S.C. 2454 (Administration); (p) 22 U.S.C. 2651a (Organization of the Department of State); (q) 22 U.S.C. 2658 (Rules and regulations; promulgation by Secretary; delegation of authority) (applicable to past records); (r) 22 U.S.C. 2267 (Empowered security officers of the Department of State and Foreign Service to make arrests without warrant) (Repealed, but applicable to past records); (s) 22 U.S.C. 2709 (Special Agents); (t) 22 U.S.C. 2712 (Authority to control certain terrorism-related services); (u) 22 U.S.C. 3921 (Management of service); (v) 22 U.S.C. 4802 (Diplomatic Security), 22 U.S.C. 4804(3)(D) (Responsibilities of Assistant Secretary for Diplomatic Security) (Repealed, but applicable to past records); (w) 22 U.S.C. 4831–4835 (Accountability review, accountability review board, procedures, findings and recommendations by a board, relation to other proceedings); (x) 44 U.S.C. 3101 (Federal Records Act of 1950, Sec. 506(a) as amended) (applicable to past records); (y) Executive Order 10450

(Security requirements for government employment); (z) Executive Order 12107(Relating to the Civil Service Commission and Labor-Management in the Federal Service); (aa) Executive Order 13526 and its predecessor orders (Classified National Security Information); (bb) Executive Order 12968 (Access to Classified Information); (cc) 22 CFR Subchapter M (International Traffic in Arms) (applicable to past records); (dd) 40 U.S.C. Chapter 10 (Federal Property and Administrative Services Act (1949)); (ee) 31 U.S.C. (Internal Rev Code); (ff) Pub. L. 99–399, 8/27/86; (Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended); (gg) Pub. L. 99–529, 10/24/86 (Special Foreign Assistance Act of 1986, concerns Haiti) (applicable to past records); (hh) Pub. L. 100–204, Section 155, 12/22/87 (concerns special security program for Department employees responsible for security at certain posts) (applicable to past records); (ii) Pub. L. 100–202, 12/22/87 (Appropriations for Departments of Commerce. Justice, and State) (applicable to past records); (jj) Pub. L. 100–461, 10/1/88 (Foreign Operations, Export Financing, and Related Programs Appropriations Act); (kk) Pub. L. 102–138, 10/28/91 (Foreign Relations Authorization Act, Fiscal Years 1992 and 1993) (applicable to past records); (ll) Pub. L. 107–56, 10/26/2001 (USA PATRIOT Act-Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism); (mm) Pub. L. 108–21, 4/30/2003 (PROTECT Act-Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003); (nn) Executive Order 12356 (National Security Information) (applicable to past records); (oo) Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); (pp) HSPD–12, 8/27/04 (Homeland Security Presidential Directive); (qq) Executive Order 13356, 8/27/04 (Strengthening the Sharing of Terrorism Information to Protect Americans); (rr) P.L. 108–458 (Sect. 1016), 12/17/04 (Intelligence Reform and Terrorism Prevention Act of 2004); (ss) 22 U.S.C. 254 (Diplomatic Relations Act); and (tt) 22 U.S.C. 4301 et seq. (Foreign Missions Act).

PURPOSE(S):

The records maintained in State–36, Security Records, capture data related to incidents and threats affecting U.S. Government personnel, U.S. Government information, or U.S. Government facilities world-wide for a variety of legal purposes including Federal and state law enforcement and counterterrorism purposes. The information maintained in Security Records can also be used to determine general suitability for employment or retention in employment, and to grant a contract or issue a license, grant, or security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Security Records is used by:

(a) Appropriate Congressional Committees in furtherance of their respective oversight functions;

(b) Department of Treasury; U.S. Office of Personnel Management; Agency for International Development; Department of Commerce; Peace Corps; Department of Defense; Central Intelligence Agency; Department of Justice; Department of Homeland Security; National Counter Terrorism Center; and other Federal agencies inquiring pursuant to law or Executive Order in order to make a determination of general suitability for employment or retention in employment, to grant a contract or issue a license, or grant a security clearance;

(c) Any Federal, state, municipal, foreign or international law enforcement or other relevant agency or organization for law enforcement or counterterrorism purposes: threat alerts and analyses, protective intelligence and counterintelligence information, information relevant for screening purposes, and other law enforcement and terrorism-related information as needed by appropriate agencies of the Federal government, states, or municipalities, or foreign or international governments or agencies;

(d) Any other agency or department of the Federal Government pursuant to statutory intelligence responsibilities or other lawful purposes;

(e) Any other agency or department of the Executive Branch having oversight or review authority with regard to its investigative responsibilities;

(f) A Federal, state, local, foreign, or international agency or other public authority that investigates, prosecutes or assists in investigation, prosecution or violation of criminal law or enforces, implements or assists in enforcement or implementation of statute, rule, regulation or order;

(g) A Federal, state, local or foreign agency or other public authority or professional organization maintaining civil, criminal, and other relevant enforcement or pertinent records such as current licenses; information can be given to a customer reporting agency: (1) In order to obtain information, relevant enforcement records or other pertinent records such as current licenses or (2) To obtain information relevant to an agency investigation. a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance or the initiation of administrative, civil, or criminal action;

(h) Officials of government agencies in the letting of a contract, issuance of a license, grant or other benefit, and the establishment of a claim;

(i) Any private or public source, witness, or subject from which information is requested in the course of a legitimate agency investigation or other inquiry to the extent necessary to identify an individual; to inform a source, witness or subject of the nature and purpose of the investigation or other inquiry; and to identify the information requested;

(j) An attorney or other designated representative of any source, witness or subject described in paragraph (j) of the Privacy Act only to the extent that the information would be provided to that category of individual itself in the course of an investigation or other inquiry;

(k) A Federal agency following a response to its subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury;

(l) Relevant information may be disclosed from this system to the news media and general public in furtherance of a legitimate law enforcement or public safety function as determined by the Department, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, to provide alerts, assessments or similar information on potential threats to life, health or property, or to keep the public appropriately informed of other law enforcement or Department matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy and could not reasonably be expected to prejudice the outcome of a pending or future trial;

(m) State, local, Federal or non-governmental agencies and entities as needed for purposes of emergency or disaster response; and

(n) U.S. Government agencies within the framework of the National Suspicious Activity Report (SAR) Initiative (NSI) regarding foreign intelligence and terrorist threats managed by the Department of Justice.

The Department of State periodically publishes in the **Federal Register** its

standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Security Records, State–36.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, physical and electronic media.

RETRIEVABILITY:

The system is accessed by individual name or other personal identifiers.

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute (FSI) distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Security Records, a user must first be granted access to the Department of State computer system, and user access is not granted until a background investigation has been completed.

Remote access to the Department of State network from non-Department owned systems is authorized only to unclassified systems and only through a Department-approved access program. Remote access to the unclassified network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements, which include but are not limited to two-factor authentication and time out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

Retention of the records varies depending upon the specific kind of record involved. The records are retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services (A/GIS/IPS), SA–2, Department of State, Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

For records in the decentralized security records system: Principal Deputy Assistant Secretary for Diplomatic Security and Director, Diplomatic Security Service; Department of State, SA–20, 23rd Floor, 1801 North Lynn Street, Washington, DC 20522–2008 for the Harry S Truman Building, domestic annexes, field offices and missions; Security Officers at respective U.S. embassies, consulates, and missions abroad. For records under the jurisdiction of the Office of Foreign Missions (OFM): Deputy Assistant Secretary and OFM Deputy Director, Harry S Truman Building, 2201 C Street NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Diplomatic Security may have security/investigative records pertaining to themselves should write to the Director, Office of Information Programs and Services, A/GIS/IPS, SA–2, Department of State, Washington, DC 20522–8100. The individual must specify that he/she wishes the Security Records to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; and a brief description of the circumstances that may have caused the creation of the record.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual; persons having knowledge of the individual; persons having knowledge of incidents or other matters of investigative interest to the Department; other U.S. law enforcement agencies and court systems; pertinent records of other Federal, state, or local agencies or foreign governments; pertinent records of private firms or organizations; the intelligence community; and other public sources. The records also contain information obtained from interviews, review of records, and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Any exempt records from other agencies' systems of records that are recompiled into this system are also considered exempt to the extent they are claimed as such in the original systems.

Pursuant to 5 U.S.C. 552a(j)(2), records in this system may be exempted from subsections (c)(3) and (4), (d), (e)(1), (2), (3), and (e)(4)(G), (H), and (I), and (f) of the Privacy Act. Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(4), (k)(5), and (k)(6), records in this system may be exempted from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

[FR Doc. 2013–11094 Filed 5–8–13; 8:45 am]

BILLING CODE 4710–43–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS455]

WTO Dispute Settlement Proceeding Regarding Indonesia—Importation of Horticultural Products, Animals, and Animal Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that the United States has requested and obtained the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement"). That request may be found at *www.wto.org* contained in a document designated as WT/DS455/7. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 2, 2013, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov*, docket number USTR–2013–0002. If you are unable to provide submissions at *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Arthur Tsao, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been requested and established pursuant to the WTO Dispute Settlement Understanding ("DSU"). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by the United States

The United States has requested the establishment of a panel to consider Indonesia's import restricting measures on the importation of horticultural products, animals, and animal products. In particular, Indonesia imposes non-automatic import licensing regimes for horticultural products and for animals and animal products pursuant to which an importer must complete multiple steps prior to importing those products into Indonesia. The legal instruments through which Indonesia maintains these measures are set out in the panel request.

Indonesia imposes a non-automatic import licensing regime for horticultural products pursuant to which an importer must complete multiple steps prior to importing a horticultural product into Indonesia. These steps include, first, an importer must obtain a Horticultural Product Import Recommendation ("RIPH") certificate from the Ministry of Agriculture. When issuing the RIPH certificate, the Ministry of Agriculture considers factors such as production and availability of similar products domestically, domestic consumption of the product, and potential of the imported product to distort the market. Second, an importer must apply to receive a designation as a Producer Importer of Horticultural Products or Registered Importer of Horticultural Products from the Ministry of Trade. Third, for each imported product, the importer must apply to the Minister of Trade for an import license by submitting the RIPH certificate and the designation.

Indonesia also imposes a non-automatic import licensing regime and quotas for animals and animal products pursuant to which an importer must complete multiple steps prior to importing an animal or animal product into Indonesia. These steps include, first, importers must receive an Import Approval Recommendation ("RPP") from the Ministry of Agriculture to import animals or animal products. After receiving the RPP, the importer must then apply for an import license with the Ministry of Trade. The Ministry of Trade only allows the importation of the product if, among other factors, domestic production and supply of the product do not meet "demand for public consumption at reasonable price."

Indonesia's government also sets the quotas for animals and animal products twice a year, which is enforced through the import licensing regime.

Through these measures, Indonesia appears to have acted inconsistently with the following obligations: Articles X:3(a) and XI:1 of the General Agreement on Tariffs and Trade 1994; Article 4.2 of the Agreement on Agriculture; and Articles 3.2 and 3.3 the Agreement on Import Licensing Procedures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2013–0002. If you are unable to provide submissions by *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov*, enter docket number USTR–2013–0002 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment!" (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a "Type Comments" field, or by attaching a document using an "Upload File" field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comments" field.

A person requesting that information, contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter:

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2013–0002, accessible to the public at *www.regulations.gov*.

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at *www.ustr.gov*: The United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at *www.wto.org*. Comments open to public inspection may be viewed at *www.regulations.gov*.

Juan Millan,

Assistant United States Trade Representotive for Monitoring and Enforcement.

[FR Doc. 2013–10991 Filed 5–8–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Docket No. FMCSA–2013–0028]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0028 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 25 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Allan L. Anthony

Mr. Anthony, age 54, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/30, and in his left eye, counting fingers. Following an examination in 2013, his optometrist noted, "It is, in my opinion, that Mr. Anthony's vision is sufficient for operation of a commercial motor vehicle." Mr. Anthony reported that he has driven straight trucks for 29 years, accumulating 188,500 miles, and tractor-trailer combinations for 29 years, accumulating 58,000 miles. He holds a Class A Commercial Driver's License (CDL) from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James C. Barr

Mr. Barr, 55, has had strabismic amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/160. Following an examination in 2012, his optometrist noted, "In my medical opinion, Mr. Barr has sufficient central and peripheral vision; as well as, sufficient gross depth perception to perform the driving tasks required to operate a commercial vehicle." Mr. Barr reported that he has driven straight trucks for 7 years, accumulating 350 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clifford L. Burrus

Mr. Burruss, 71, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, "Since Mr. Burruss has been a professional truck driver for 40 years with an accident free driving

record, it is my opinion that his vision is satisfactory to continue in his occupation for the next two years." Mr. Burruss reported that he has driven straight trucks for 1 year, accumulating 60,000 miles, and tractor-trailer combinations for 40 years, accumulating 5 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian G. Dvorak

Mr. Dvorak, 53, has had myopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2012, his ophthalmologist noted, "Mr. Dvorak has the ability to recognize the colors of traffic control signals and devices and in my opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Dvorak reported that he has driven tractor-trailer combinations for 27 years, accumulating 270,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger Dykstra

Mr. Dykstra, 58, has a central scotoma in his left eye due to a traumatic incident in 1986. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his ophthalmologist noted, "Enclosed is a copy of the formal perimetry test which indicates that the patient has a 120 degree field of vision and it is my medical opinion that Mr. Dykstra is able to operate his service truck for his employment in the same safe manner that he has done since his employment in 1995." Mr. Dykstra reported that he has driven straight trucks for 40 years, accumulating 580,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald R. Eister

Mr. Eister, 48, has had aniridia in his left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2013, his optometrist noted, "So with the right eye seeing 20/20 without correction and the left eye having good peripheral I feel he is safe to operate a commercial vehicle." Mr. Eister reported that he has driven straight trucks for 28 years, accumulating 873,600 miles, and tractor-trailer combinations for 10 years, accumulating 100,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Juan M. Guerrero

Mr. Guerrero, 40, has had optic atrophy in his right eye since 1993. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, "Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Guerrero reported that he has driven straight trucks for 13 years, accumulating 1.2 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he ran a stop sign.

Michael L. Huffman

Mr. Huffman, 59, has had strabismic amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2013, his optometrist noted, "Based on his visual findings and his previous work and driving experience, I feel as though Mr. Huffman has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Huffman reported that he has driven straight trucks for 38 years, accumulating 3.8 million miles, tractor-trailer combinations for 3 years, accumulating 102,000 miles, and buses for 1.5 years, accumulating 750 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John T. Johnson

Mr. Johnson, 34, has a retinal detachment in his right eye due to a traumatic incident in 1998. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, "Given the stability of his exam, his excellent visual acuity, color vision and visual field in the left eye, he should be able to continue operating a commercial vehicle from a vision standpoint." Mr. Johnson reported that he has driven straight trucks for 13 years, accumulating 650,000 miles, and tractor-trailer combinations for 13 years, accumulating 650,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin S. Kacicz

Mr. Kacicz, 42, has a cataract in his left eye due to a traumatic incident during childhood. The best corrected visual acuity in his right eye is 20/25, and in his left eye, 20/50. Following an examination in 2012, his optometrist noted, "I certify that I have reviewed the federal requirements for drivers of interstate commercial vehicle with respect to vision, and in my opinion, the above patient does meet the federal requirements for vision for interstate commercial vehicle operators." Mr. Kacicz reported that he has driven straight trucks for 15 years, accumulating 699,990 miles, and tractor-trailer combinations for 6 months, accumulating 100,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas Korycki

Mr. Korycki, 48, has had amblyopia in his left eye due since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2012, his ophthalmologist noted, "Patient has sufficient vision to perform tasks required to operate commercial vehicle." Mr. Korycki reported that he has driven straight trucks for 33 years, accumulating 33,000 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John Kozminski

Mr. Kozminski, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his ophthalmologist noted, "In my medical opinion, Mr. Kozminski has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kozminski reported that he has driven straight trucks for 25 years, accumulating 250,000 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry W. Lunde

Mr. Lunde, 60, has a retinal detachment in his right eye due to a traumatic incident in 2002. The best corrected visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2012, his

optometrist noted, "In my opinion, Larry Lunde has sufficient vision to perform all tasks required for driving a commercial vehicle." Mr. Lunde reported that he has driven straight trucks for 30 years, accumulating 150,000 miles, and tractor-trailer combinations for 30 years, accumulating 3.3 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Matos

Mr. Matos, 53, has had a prosthetic left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his optometrist noted, "He has a prosthetic left eye all his life . . . His vision is 20/20 in the right eye . . . I am confident in his ability to continue to drive a truck or any other commercial vehicle." Mr. Matos reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chad Penman

Mr. Penman, 43, has had optic nerve damage in his right eye since 2006. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, "In my opinion Chad has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Penman reported that he has driven straight trucks for 20 years, accumulating 800,000 miles, and tractor-trailer combinations for 10 years, accumulating 350,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond Potter

Mr. Potter, 51, has a prosthetic left eye due to a traumatic incident in 1991. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2012, his optometrist noted, "In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Potter reported that he has driven straight trucks for 14 years, accumulating 210,000 miles. He holds an operator's license from Rhode Island. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Rothermel

Mr. Rothermel, 46, has had high myopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, "Mr. Rothermel's uncorrected and corrected vision is more than sufficient to operate a commercial vehicle." Mr. Rothermel reported that he has driven straight trucks for 22 years, accumulating 660,000 miles. He holds a Class 10 license from Rhode Island. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles T. Spears

Mr. Spears, 44, has had a prosthetic left eye since 1993. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his optometrist noted, "In my medical opinion, Mr. Spears has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Spears reported that he has driven tractor-trailer combinations for 10 years, accumulating 250,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian Tessman

Mr. Tessman, 56, has had optic nerve hypoplasia in his left eye since birth. The best corrected visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2013, his optometrist noted, "I certify that you are stable and in my opinion are sufficient to continue your commercial vehicle operations." Mr. Tessman reported that he has driven straight trucks for 14 years, accumulating 653,744 miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory Thurston

Mr. Thurston, 55, has had anisometropic amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2012, his optometrist noted, "In my medical opinion, Mr. Gregory Thurston has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Thurston reported that he has driven straight trucks for 33 years, accumulating 231,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald R. Torbett

Mr. Torbett, 47, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15, and in his left eye, 20/50. Following an examination in 2012, his optometrist noted, "In my opinion, Donald has sufficient vision to continue to operate a commercial vehicle without glasses." Mr. Torbett reported that he has driven tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scharron Valentine

Mr. Valentine, 44, has had a macular scar in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, "From these results I believe Mr. Valentine has a sufficient visual acuity, visual field, and color discrimination to continue to safely operate a commercial vehicle." Mr. Valentine reported that he has driven tractor-trailer combinations for 3 years, accumulating 234,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 12 mph.

Allen D. Weiand

Mr. Weiand, 62, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2013, his optometrist noted, "In my medical opinion Allen Weiand's vision status is stable, and I would also state that he has sufficient vision to safely operate a motor vehicle (a commercial motor vehicle)." Mr. Weiand reported that he has driven straight trucks for 45 years, accumulating 900,000 miles, and tractor-trailer combinations for 40 years, accumulating 200,000. He holds Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James Whiteway

Mr. Whiteway, 61, has had central corneal opacity in his left eye since 2000. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in

2013, his ophthalmologist noted, "I feel that Mr. Whiteway has sufficient vision ability to operate a commercial vehicle." Mr. Whiteway reported that he has driven straight trucks for 12 years, accumulating 800,000 miles, tractor-trailer combinations for 30 years, accumulating 3 million miles, and buses for less than one year, accumulating 50,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Billy W. Wilson

Mr. Wilson, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, "Sufficient vision to perform commercial driving tasks." Mr. Wilson reported that he has driven tractor-trailer combinations for 24 years, accumulating 1.8 million miles. He holds a Class AM CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business June 10, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 30, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–11066 Filed 5–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Solicitation of Grant Applications for FY 2013 Tribal Transit Program Funds; and Responses to the November 9, 2012 Solicitation of Comments.

SUMMARY: This Notice accomplishes several purposes. First, the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA) summarizes and responds to written comments FTA received in response to a November 9, 2012, **Federal Register** Notice regarding proposed grant program provisions for this modified program. Second, this Notice establishes the framework for the Tribal Transit Program, including the terms and conditions and local match requirements. Finally, this Notice announces the availability of funds and a national solicitation for proposals from grantees for projects selected on a competitive basis; the grant terms and conditions that will apply to the discretionary program; and grant application procedures and selection criteria for FY 2013 projects.

DATES: Complete proposals for the Tribal Transit Program announced in this Notice must be submitted by 11:59 p.m. EDT on July 8, 2013. All proposals must be submitted electronically through the GRANTS.GOV "APPLY" function. Any tribe intending to apply should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the submission deadline. Instructions for applying can be found on FTA's Web site at *http://www.fta.dot.gov/tribaltransit* in the "FIND" module of GRANTS.GOV.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Office at *http://www.fta.dot.gov* for proposal-specific information and issues. For general program information, contact Lorna Wilson, Office of Program Management, (202) 366–0893, email: *lorna.wilson@dot.gov* or Elan Flippin, Office of Program Management, (202) 366–3800, email: *elan.flippin@dot.gov*. ATDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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A. Overview

Section 5311(j) of MAP–21, Public Law 112–41 (July 6, 2012), authorizes the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)) for Fiscal Years (FY) 2013–2014. The program authorizes direct grants "under such terms and conditions as may be established by the Secretary" to Indian tribes for any purpose eligible under FTA's Formula Grants for Rural Areas Program, 49 U.S.C. 5311. The modified Tribal Transit Program continues to be a set-aside from the Formula Grants for Rural Areas program but now consists of a $25 million formula program and a $5 million discretionary grant program subject to the availability of appropriations. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are available annually on a competitive basis.

B. Background

FTA published a **Federal Register** Notice dated October 16, 2012, "Notice of FTA Transit Program Changes, Authorized Funding Levels, and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP–21): FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance." The Notice announced new FTA programs and changes to current programs, including the Tribal Transit Program. Subsequently, FTA published **Federal Register** Notice (77 FR 67439) Fiscal Year 2013 Public Transportation on Indian Reservation Program: Request for comment, Announcement of Public meetings on November 9, 2012. The **Federal Register** Notice set forth and requested public comments on the proposed implementation of both the formula and discretionary program under the Tribal Transit Program. FTA requested comment on the following issues: The proposed method FTA will use to allocate formula funds; grantee eligibility; eligible purposes for grant funds; proposed terms and conditions for the grant program, and local match requirements. The Notice also announced two one-day outreach meetings on the Tribal Transit Program. The comment period on the November 9, 2012, **Federal Register** Notice ended on January 8, 2013. FTA accepted late comments to the extent practicable.

C. Comments and Responses

FTA received 28 submissions in response to the November 9, 2012, **Federal Register** Notice and additional oral comments received from the Indian tribes, other stakeholders, and organizations at the two outreach meetings held in November and December of 2012. The 28 submissions contained 250 separate responses. The comments have been divided into the following categories: (1) The process by which FTA should allocate TTP formula funds; (2) eligible applicants and eligible projects under the discretionary program, as well as the establishment of minimum and maximum grant award amounts under the discretionary program and prioritization of projects within the discretionary program; (3) proposed options for local match, and indirect costs (4) the terms and conditions applied to grants awarded under the TTP; and other issues that were not specifically proposed or addressed in the November 9, 2012 **Federal Register** Notice.

The comments received from the Indian tribes, state DOT's and tribal organizations were generally favorable to the proposed implementation of the program and program requirements.

1. Formula Program

Under MAP–21, the Tribal Transit Program (TTP) distributes $25 million by a formula apportionment to eligible Indian tribes providing public transportation on tribal lands. FTA publishes an annual apportionment notice that includes program and funding information on all FTA formula and discretionary programs. All formula apportionments are based on congressional appropriations. The FY 2013 full year apportionment notice, includes the formula apportionments (shown in Table 10) for the Tribal Transit Program as modified under MAP–21. The funds shown in Table 10 on FTA's Web site are available for obligation for eligible projects consistent with the Rural Areas Formula program. Further Tribal Transit Program guidance will be included in a new chapter in the upcoming revision of the FTA Circular 9040.1. The Tribal Transit Program formula is described below.

i. Statutory Formula

Based on the statutory language in MAP–21, Tribal Transit Program (TTP) funds are apportioned directly to Indian tribes using a three-tier formula. Tiers 1 and 2 use vehicle revenue mile (VRM) data as reported to the National Transit Database (NTD); Tier 3 is based on 2010 U.S. Census data. Consistent with FTA's other formula programs, FTA is required to use the NTD as the system of record for the VRM data for the first two tiers of the formula. Since the inception of the TTP in FY 2006, tribes that receive a cumulative amount of more than $50,000 in TTP grants have been required to report data to the NTD. Tribes that operate public transportation services, but which have not yet participated in the TTP, are encouraged to file a report to the NTD on a voluntary basis to qualify for inclusion in future TTP apportionments.

The statutory tiers for the formula are:

Tier 1—50 percent of the amount made available for distribution by TTP formula, to be apportioned based on VRM as reported to the NTD;

Tier 2—25 percent of the amount made available for distribution by TTP formula, to be apportioned equally among Indian tribes providing at least 200,000 VRM;

Tier 3—25 percent of the amount made available for distribution by TTP formula, to be apportioned to Indian tribes providing public transportation on reservations in which more than 1,000 low income individuals reside. No tribe can receive more than $300,000 from this tier.

FTA will apportion funds based on these three tiers. A table of formula apportionments will be posted to the FTA Web site coinciding with the publication of this Notice (*http://www.fta.dot.gov/grants/15105.html*). Compared to the 2012 TTP, the 2013 TTP as authorized by Congress represents an increase in funding from $15 million to $30 million. However, since all but $5 million of the 2013 TTP funds are apportioned by formula, tribal transit operations that received relatively large discretionary grants in the past may see a decrease in funding as 2013 funds are spread over a broader constituency due to the three-tier formula. The actual amount available in FY 2013 is included in FTA's Supplemental Fiscal Year 2013 Apportionments, Allocations, and Program Information.

In the November 9, **Federal Register** Notice, FTA posted a request for comment on the fiscal year 2013 Public Transportation on Indian Reservations Program (referred to here as the TTP). In this notice (201277 FR 67439) FTA sought comment on specific questions concerning the methodology used to apportion TTP formula funding. Specifically, FTA proposed questions on factors related to the attribution of VRM data and the allocation of formula funding. This Notice responds to the pertinent comments received. FTA also received comments suggesting alternative approaches to allocating TTP formula funds. However, as the TTP formula is prescribed by MAP–21, FTA does not have authority to implement alternative approaches and therefore, FTA has not addressed those individual comments.

FTA's responses to questions on the TTP formula factors as listed in the November 9 **Federal Register** notice are provided here under the following sections: (ii) VRM; (iii) Service eligibility; (iv) Pro-rated shares for Local governmental agencies; (v) Tier 3 Formula Funding Eligibility; (vi) Eligibility of tribes exempt from NTD reports; (vii) Consolidation of data for Multiple Operators; (viii) Shared reservation apportionment factors; and (ix) Combining of poverty data for multiple reservations.

ii. Vehicle Revenue Miles (VRM)

Should FTA include VRM from Tribes in both the Tribal Transit Formula Program and the Rural Area Formula Program?

Comment: Fourteen commenters agreed with FTA's proposal to allow VRMs to count in both the Tribal Transit Program and the Formula Grants for Rural Areas Program. According to the commenters, tribes who have provided public transportation for many years under the TTP would receive a substantial decrease of funding under the new formula allocations. Three commenters disagreed with allowing this method of allocation in response to the Illustrative apportionments posted by FTA.

Response: Normally, FTA does not allow a single VRM to count twice towards different formulas (e.g., service between a rural area and an urbanized area (UZA) may count towards the Rural Area Formula Program apportionment or the Urbanized Area Formula Program apportionment, but not both). However, FTA will allow an exception under the TTP because the formula refers to "Indian tribe[s] providing public transportation" not to where the service is being operated, so a single vehicle revenue mile may be both "provided by an Indian tribe" for purposes of the Tribal Transit Formula and also "attributable to a rural area" for purposes of the Rural Area Formula. Thus, FTA will count vehicle revenue miles reported by Indian tribes in the NTD towards both the Tribal Transit Formula and towards the corresponding State in the Rural Area Formula.

iii. Service Eligibility

When another local government entity pays an Indian tribe to operate service in an off-reservation jurisdiction, should

100% of that service operated by the Indian tribe count towards the Tribal Transit Program formula?

Comment: Out of the 12 comments received by FTA on service eligibility, six commenters were in favor of allowing this service to count towards the TTP formula, four opposed and commented that if an Indian tribe is already being paid by the local government, they should not be paid twice through the TTP. Two commenters were neutral on the subject.

Response: FTA will continue to count 100 percent of service operated by Indian tribes towards the TTP apportionment. This interpretation is consistent with "each Indian tribe providing public transportation service."

iv. Prorated Shares for Local Governmental Agencies

When an Indian tribe pays another local government entity to extend service to the Reservation, should a pro-rated share of the local government's vehicle revenue miles be counted towards the Tribal Transit formula?

Comment: Of the 11 comments received, six were in favor of counting these vehicle revenue miles, five opposed stating that FTA should not include local government VRM toward the TTP formula apportionment; one commenter was neutral. Those in favor felt that tribes would benefit from the application of the pro-rated share. One commenter proposed to allow the portion of the entity's VRM that is paid for by the tribe to qualify and to calculate the VRM in proportion to the share of the entity's operating budget provided by the tribe. They felt this approach would be equitable.

Response: As suggested, FTA will count a pro-rated share of the operator's VRMs towards the TTP apportionment, based on the portion of the total operating expenses provided by the Indian tribe. This share then would count towards both the Rural and TTP formulas. For purposes of the FY 2013 apportionment, as a result of these comments FTA engaged in a special data collection from impacted Indian tribes to ensure that the full amount of operating expenses provided by the tribe was collected. This is reflected in the final FY 2013 TTP apportionment table.

v. Tier 3 Formula Funding Eligibility

Should FTA consider tribes that actually are providing public transportation on Indian reservations when there is no revenue miles reported to the NTD for funding under Tier 3?

Comment: A large majority of the comments (9 out of 11) stated that FTA should only include Indian tribes in Tier 3 if they previously reported to the NTD. One commenter stated that a tribe who reports measurable results should be rewarded, not those that lack record keeping. Another commenter, responding on behalf of several tribes, agreed with FTA's proposal to only consider Indian tribes that are providing public transportation on Indian reservations and that report to the NTD. The commenter stated that this policy proposal seemed to be required as a matter of fundamental fairness and consistency with Congress' intent in establishing the new TTP funding formula.

Response: FTA will consider all Indian tribes that are registered with the NTD for purposes of Tier 3 of the formula funding, even if the tribe did not report any public transportation service provided (e.g. no VRMs); however, the tribe must be engaged in providing public transportation in order to be eligible for formula funding. Specifically, FTA will consider all Indian tribes that are registered with the NTD and are providing public transportation as of October 1st, the first day of the current Fiscal Year, as eligible for Tier 3 of the formula funding for the fiscal year. As a result of this approach, two Indian tribes that were previously identified to receive an illustrative apportionment will not receive a full year apportionment; however, these Indian tribes may be eligible to apply for the discretionary program. Tribes can register to report to the NTD through the NTD Web page (*www.ntdprgram.gov*) or by contacting the NTD operations center at 888–252–0963. Reporting to the NTD also allows a tribe to access Tier 1 and Tier 2 funds by reporting the VRM they provide.

vi. Eligibility of Tribes Exempt From NTD Reports

Should FTA consider allowing Tribal Transit Program grantees who were otherwise exempt from reporting based on grant dollar amount (under $50,000) be given an opportunity to report to the NTD or to FTA for inclusion in the FY 2013 apportionment?

Comments: Twelve of fourteen commenters were completely in favor of including data from previously exempt tribes in the formula apportionment. Two commenters felt that exempt Indian tribes could be included only if all current grantees were fully funded, and if VRM for the new tribes is verifiable.

Response: As noted above, FTA will only include Indian tribes that report to the NTD in the formula apportionment. Any tribe, exempt or not, can report to the NTD on a voluntary basis in the future and so qualify for consideration in the formula program. The majority of the exempt grantees (those with grant amounts under $50,000) received planning grants only to develop new transit services and therefore, FTA does not expect that they have VRM to report. Absent a registration in NTD and absent VRM to report, the tribe is not included in formula program, but could be eligible under the discretionary program. If the Indian tribe begins reporting to the NTD now, it will be eligible to receive funds in the FY 2014 apportionment.

vii. Consolidation of Data for Multiple Operators

For Indian tribes that have multiple operators, should FTA consolidate the service data for all operators into a single apportionment?

Comment: Eleven of the 12 commenters agree that FTA should consolidate the service data for all operators into a single apportionment for Indian tribes that have multiple operators. One commenter agreed with an exception that the consolidation of service data should occur in consultation with the Indian tribes.

Response: FTA will consolidate the data into a single apportionment in consultation with the tribal communities affected by this policy.

viii. Shared Reservation Apportionment Factors

For Indian tribes that share lands identified by the US Census Bureau, such as in Oklahoma, how should FTA conduct the apportionment of funds?

Comment: Many Indian tribes commented on the question of how FTA should conduct the apportionment of funds amongst tribes who share reservation lands. The commenters identified four areas for FTA's consideration; (a) the need for FTA to develop a fair and consistent process to count VRM, population, and factors that constitute tribal land and to ensure that this process included the consultation of the Indian tribes. One commenter suggested that FTA utilize the same process for splitting transit shares as is utilized by Native American Housing Assistance and Self Determination Act population figures; (b) for Indian tribes that share lands, ensure that there is no double-counting of VRM or persons with incomes below the poverty line so that there is a fair outcome; (c) FTA's needs to be more consistent in the use of terms such as "tribal lands", "reservations", and "tribal

communities''. They are not the same and FTA usage prompted confusion among the readers; (d) commenters indicated that there is a single Indian tribe providing public transportation services in each of the shared reservation areas.

Response: FTA found three instances where more than one Indian tribe shares a tribal area as identified by the U.S. Census Bureau. For TTP formula apportionments, the population of low-income individuals in the shared areas will be attributed to the Indian tribe that provides public transportation for that area. NTD staff has contacted the Indian tribes involved to determine which tribe provides that service and has included the count of low-income residents of that shared area in with the count for the providing an Indian tribe's other tribal lands for formula apportionment calculations.

ix. Combining of Poverty Data for Multiple Reservations

In some instances, tribal operators may serve multiple reservations. Should FTA combine poverty data for all reservations served into a single apportionment?

Comment: Many of the commenters agreed that FTA should consolidate the service data for all tribes served by an operator into a single apportionment. Several commenters suggested that FTA must ensure that there is agreement amongst Indian tribes for distributing the apportionment fairly. One commenter disagreed and suggested that FTA allocate poverty data to the Indian tribe only and subsequently allow the Indian tribe to reallocate funds to its operators.

Response: FTA will combine the data from the U.S. Census Bureau of multiples Indian tribes served by a single operator for purposes of the apportionment. In some cases, a single entity may represent multiple Indian tribes, only some of which are directly served by the sponsored public transportation service. In these cases, FTA will not combine the Census Data for any Tribal Lands that are not served at all by the public transportation service—only the Census data for Tribal Lands at least partially served by the public transportation service will be included. FTA proposes to let the tribal recipients then allocate these funds to sub-recipients according to local policy. This is consistent with FTA policy for other grant programs. FTA will provide technical assistance with this process upon request.

Other Comments

Indian tribes also offered recommendations and changes to FTA's proposals based on their unique perspective and experience in providing public transportation on Indian reservations. More specifically, representatives of the Alaska tribes expressed concern regarding distinctions between federal land and boundary issues. To the extent permissible by statute, FTA considered the comments and developed a formula program inclusive of all Indian tribes.

2. Discretionary Program

Under MAP–21, the Tribal Transit Program (TTP) makes $5 million available to be allocated annually on a competitive basis and subject to the terms and conditions as established by FTA. With the presence of a formula program, which provides reliable and stable funding to many of Indian tribes and a much smaller discretionary program than in past years, FTA has established a new discretionary program as reflected in the responses to comments below. However, there will be some exceptions in the first year (FY 2013) of the discretionary program as noted in the NOFA section of this notice.

i. Eligibility

The November 9, 2012 **Federal Register** Notice posed the following questions for comment: *(a) Should eligible applicants under the discretionary program be restricted based on the availability of formula funds? (b) If the discretionary program should be restricted, should applicants and projects be limited based on the amount of formula allocation received?*

Comment: Many (sixteen) Indian tribes commented that there should be no restriction on who can apply for discretionary funds, and FTA should not tie eligibility of the discretionary program to that of the availability of the formula funds. Many Indian tribes were concerned that their formula allocation was insufficient to sustain service. Indian tribes also commented that those who received small amounts of formula funds be given an opportunity to apply for discretionary funds. Eight tribes commented that Indian tribes who received Tier 2 funds under the formula should not be eligible to apply for discretionary funds. One Indian tribe commented that the discretionary program should be based on the merit of the proposal, while another Indian tribe commented that a limit on applicants might be needed due to the limited amount of funding under the discretionary program. One Indian tribe commented that only recipients of Tribal formula apportionments (5311(c) grantees) should be eligible for funding under the discretionary program; another Indian tribe commented the discretionary funds should serve as a complement to the formula allocation.

Response: FTA will permit all federally recognized tribes to apply to the discretionary program with no limitations related to the availability of formula funds. Recipients of formula funds may apply for discretionary funds. We encourage Indian tribes to apply for discretionary funds regardless of whether they received a formula allocation. Further, FTA reminds Indian tribes and states that the receipt of either formula or discretionary TTP funds does not preclude the receipt of section 5311 Rural Area formula funds. In fact, the funds are not intended to supplant other federal funding and Indian tribes are encouraged to seek section 5311 funds from State Departments of Transportation.

(a) Should a portion of discretionary funds be set aside for: Start-up projects, planning projects or expansion of services? (b) Should operating assistance continue to be eligible under the discretionary program? If so, what type of operating expenses?

Comment: Many Indian tribes commented that discretionary funds should be set aside for certain projects such as: Start-ups, planning projects, and expansion of services. One Indian tribe commented that discretionary funds should be set aside for planning and start-up projects only, while two Indian tribes commented that only capital projects have set aside funds and priority only be given to Indian tribes with CNG bus fleets. However, two Indian tribes commented that there should be no set aside projects under the discretionary program. Several Indian tribes commented that FTA should continue to allow operating assistance to be eligible under the discretionary program. Tribes stated that operating expenses including maintenance of vehicles, salaries, operating costs of equipment and facilities, and fuel should be eligible expenses under the program. Numerous Indian tribes indicated that formula funds were inadequate to operate a system and they would need to apply for discretionary funds to cover the costs of operating. A small number of Indian tribes commented that operating should not be eligible under the discretionary program.

Response: Starting in FY 2013, FTA is limiting eligible projects under the discretionary program to the following:

planning; operating for start-up systems only (with one exception for FY 2013); and capital for start-up services, replacement or expansion. FTA is aware that planning, operating, and capital activities are vital parts of Indian tribe's transportation systems and infrastructure. As a result, planning grants will continue to remain eligible. FTA also acknowledges that new tribal transit systems (e.g. start-up systems, services) need a funding source to seek funds for start-up operations and capital equipment needs for those services. FTA is striving to balance these needs with the fact that it wants to ensure that Indian tribes can operate transportation services without depending on discretionary funds, particularly given the limited amount of available discretionary resources. Therefore, general operating assistance will no longer be eligible under the discretionary program under MAP–21, except in limited circumstances in FY 2013 as described in Section D of this Notice. Indian tribes now have a reliable source of funding available through the formula allocation, in addition to possible section 5311 or State formula funds, to maintain existing operations and/or expand current services. Capital, for any type of eligible transit project (e.g. start-up, replacement, or expansion) will continue to be eligible under the program.

ii. Funding Prioritization

Should FTA prioritize projects for funding as a part of the evaluation criteria? If so, what factors should be used to prioritize projects (continuation services, start-ups (new services), matching funds, etc.)?

Comment: Numerous Indian tribes who commented on funding prioritization suggested prioritizing expansion of services, continuation of services, and projects for which the Indian tribes can provide local match. A few Indian tribes stated FTA should allow Indian tribes to prioritize based on their own needs. Another Indian tribe stated that projects should not be prioritized based on project type, but rather, FTA should use vehicle revenue miles as an evaluation criterion and prioritize based on past service effectiveness; one tribe stated that prioritization should occur to ensure that those Indian tribes with the greatest needs are funded.

Response: FTA will not set funding priorities, however many Indian tribes commented that certain types of projects were needed, such as capital, operating and planning. FTA addressed this suggestion by permitting all of these categories to remain eligible under the program, with some limitations such as operating, which will now be limited to start-up systems only, except in FY 2013.

iii. Grant Award Amount Limitation

Should FTA establish minimum and maximum grant awards to ensure that grant funding is large enough to aid Indian tribes?

Comment: Many Indian tribes commented that there should be a minimum or maximum grant award amount under the discretionary program. There were various amounts suggested by the Indian tribes; one Indian tribe commented that the maximum grant award should be $1,000,000, while another Indian tribe commented that there should be a minimum grant award amount of $50,000. Other Indian tribes commented that the establishment of a minimum and maximum grant award might be too rigid for expansion of services and new services, and planning projects should be limited to a certain number of awards with a maximum award amount set. However, a few Indian tribes commented that there should be no minimum or maximum established.

Response: With the exception of planning awards, there will be no set minimum and maximum grant award amount. Planning grants will continue to be set at a maximum of $25,000. FTA will fund eligible projects based on the merit of the application and the Indian tribe's ability to successfully address all evaluation criteria.

3. Cost Sharing, Matching, and Indirect Costs

(a) Should FTA require an 80/20 Federal/local match for tribes for both capital and operating assistance under both the formula and discretionary? (b) Would an 80/20 match present a financial burden on tribes? If so, is there a proposed match amount that would be less burdensome?

Comment: Many Indian tribes commented that FTA should not require a local match. Ten Indian tribes commented that a local match should be required. Some Indian tribes commented that if a local match were to be imposed under the programs, a 90/10 match would be less burdensome than the proposed 80/20 match. Tribes who commented that FTA should require a local match stated that matching funds are a key component in building and maintaining a committed and financially responsible transit system; one Indian tribe commented that a match requirement would encourage Indian tribes to seek other sources of funding. Several Indian tribes commented that those tribes who could provide a local match be given priority for funding when selecting discretionary projects.

Response: Historically, this program required no local match. Under MAP–21, FTA will require a minimum local match of 10 percent under the discretionary program only, unless a tribe demonstrates a financial hardship. FTA will not require a local match for any of the funds distributed by formula. The local match under the discretionary program will apply to both capital and operating expenses. However, there will be no local match required for planning grants. FTA encourages Indian tribes to seek other sources of funding that are available to support public transportation services, as well as demonstrate commitment to the projects. Sources of local match include the following: Undistributed cash surpluses, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; Local match may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the U.S. Department of Transportation) that are eligible to be expanded for transportation. However, local funds may be derived from amounts made available to carry out the Federal Lands Highway Program established by Section 204 of Title 23. Other U.S. DOT program funds are not eligible as match.

Should FTA retain the condition that indirect costs not exceed 10 percent of each Tribal Transit grant award under MAP–21?

Comment: Many Indian tribes commented that 10 percent was an acceptable indirect rate for TTP grant awards. One Indian tribe suggested a rate of 2 to 5 percent; another Indian tribe commented that when a tribe has negotiated an indirect cost rate with the Department of Interior's National Business Center, that rate applies to other federal agencies awarding grants to the Indian tribe. This tribe also commented that an indirect rate of 10 percent may be feasible for larger Indian tribes but not for smaller Indian tribes.

Response: Under the discretionary program, and consistent with past practices, eligible indirect costs will be limited to 10 percent of each Tribal Transit grant award. This will ensure the limited discretionary resources are spent on tangible transit services and equipment. Under the formula program, Indian tribes should follow FTA's guidance on charging indirect costs to the grant. This guidance can be found in

FTA Circular 5010.1D, Chapter VI, Section 6, dated November 1, 2008. Indian tribes must have approved cost allocation plans and rates in order to charge indirect costs to the formula grant.

4. Terms and Conditions for Formula and Discretionary

Section 5311(c) of Title 49 U.S.C., as amended by MAP–21, provides that available funds shall be apportioned for grants to Indian tribes, "under such terms and conditions as may be established by the Secretary." The term "Secretary" in this provision refers to the Secretary of Transportation. The Secretary of Transportation possesses the authority to limit the applicability of certain substantive and procedural requirements that are set forth in Title 49 (Transportation) of the United States Code. This includes the Federal transit assistance provisions in Chapter 53 (Public Transportation) of Title 49, which are administered by FTA. To the extent permitted by law, and recognizing the unique status and autonomy of Indian tribes, FTA established the terms and conditions to balance the objectives of this program, which directly benefit transit projects for Indian tribes, with other national objectives (e.g., safety) that are important not only to Indian tribes but also to the general public. The Secretary of Transportation, however, does not possess the authority to limit the applicability of government-wide grant requirements (commonly referred to as crosscutting requirements) that apply to all Federal grants. Therefore, all crosscutting requirements, including the Common Rule, apply to the TTP.

FTA received 54 comments on the following Terms and Conditions FTA proposed to apply to Tribal Transit Program: 1. Common Grant Rule (49 CFR Part 18), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." 2. Civil Rights Act of 1964; 3. Section 504 and Americans with Disabilities Act of 1990 (ADA) requirements in 49 CFR Parts 27, 37, and 384; 4. Drug and Alcohol Testing requirements (49 CFR Part 655); 5. National Environmental Policy Act; 6. Charter Service and School Bus transportation requirements in 49 CFR Parts 604 and 605; 7. National Transit Database (NTD) Reporting requirement; 8. Bus Testing (49 CFR 665) requirement; 9. Buy America requirements (49 CFR Part 661); 10. MAP–21, Section 5329 Agency Safety Management Plans; and 11. Transit Asset Management Provisions Transit Asset Management.

Comment: Two commenters, representing several Indian tribes, suggested requiring Indian tribes to comply with aspects of the Common Grant Rule for a transit grant causes confusion and hardship, and requested that FTA revisit its application of this rule and exercise its authority to interpret the rule in a manner that is consistent with the Indian Self-Determination and Education Assistance Act (ISDEAA) and Section 3 of Executive Order 13175.

Response: The U.S. Department of Transportation's Common Rule, which is codified at 49 CFR part 18, incorporates many Federal cross-cutting statutory requirements, but it also implements cost and property management standards established by the Office of Management and Budget which apply to all Federal assistance programs. Thus, FTA considers U.S. DOT's Common Rule to be in the nature of a crosscutting requirement, which should not be waived. In addition, Section 3 of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", provides in relevant part that Federal agencies shall adhere to the principles in Executive Order 13175 "to the extent permitted by law". Thus, because ISDEAA applies only to the U.S. Department of the Interior and the U.S. Department of Health and Human Services, FTA is not permitted to apply or waive requirements as permitted by two other Federal departments under ISDEAA.

Comment: FTA received four comments suggesting that FTA not require Indian tribes to comply with FTA-program-specific Civil Rights guidance. One commenter suggested that FTA clarify in the Master Agreement that Tribal Employment Rights Office (TERO) laws and ordinances consistent with Federal statutes do not violate the Civil Rights Act of 1964.

Response: FTA acknowledges exemptions and preferences afforded to Indian tribes under Federal law and regulations. Thus, with respect to a tribal employment rights ordinance, as Indian tribes or their contractors are authorized by statute to include Indian preference in employment on projects located on or near reservations, the nondiscrimination provision in Title VII of the Civil Rights Act of 1964 would therefore not be applicable to Indian tribes. (*See* 42 U.S.C. 2000e-2(i)). The same approach would apply to any other exemption or preference that might be afforded to Indian tribes under Federal law.

Unless Indian tribes are specifically exempted from civil rights statutes, compliance with civil rights statutes will be required, including compliance with equity in service. However, FTA does not require Indian tribes to comply with FTA program-specific guidance for Title VI.

Comment: Three Indian tribes agreed that FTA should apply ADA to the TTP. However, one commenter noted that FTA acknowledge the specific exemption of tribes under the ADA.

Response: Title I of the ADA exempts Indian tribes under the definition of "employer" and Title VII of the Civil Rights Act of 1964 also specifically exempts Indian tribes under the definition of an "employer". However, Titles II and III of the ADA are silent with regard to Indian tribes obligation to provide services and benefits to ADA eligible tribal members and/or Indian-operated public accommodations. In addition, Section 504 and ADA requirements in 49 CFR parts 27, 37, and 38 are government-wide requirements that apply to all Federal programs and will continue to apply under the TTP.

Comment: Three commenters support FTA's application of Drug and Alcohol Testing to the TTP. One commenter disagreed and stated that existing tribal Drug and Alcohol Free Workplace Policy instated by tribal leadership should suffice.

Response: FTA will apply Drug and Alcohol Testing requirements (49 CFR part 655). This requirement addresses a national safety issue for operators of public transportation.

Comment: FTA received three comments in support of FTA applying the requirements of the National Environmental Policy Act (NEPA) to the TTP.

Response: The National Environmental Policy Act is a government-wide requirement that applies to all Federal programs and will apply to the TTP.

Comment: Three commenters agreed that Charter and School Bus transportation requirements apply to the TTP. However, one Indian tribe requested that some of the Regional Transit Authority (RTA) member tribes operate casino shuttles and charters, as well as school buses that are essential components of their transit systems. One commenter suggested that FTA consider whether a waiver of this restriction is appropriate under the provisions of Executive Order 13175 in light of the special transportation needs and situations of rural tribal communities. Another commenter stated that Charter Service and School

Bus requirements should apply for services of that type primarily to preserve safety of travel. As a caveat, however, the Indian tribe recognized that services in rural areas that qualify as Human Services Organizations currently lack the funding and expertise to maintain certification.

Response: The definition of "public transportation" in 49 U.S.C. 5302 specifically excludes school bus transportation and charter service, and MAP–21 did not substantively alter this definition. Thus, TTP grantees may not provide or accommodate school bus transportation or charter service with FTA-funded vehicles or facilities except in accordance with regulatory exemptions or exceptions. Therefore, the Charter Service and School Bus transportation requirements in 49 CFR parts 604 and 605 will continue to apply. However, FTA agrees with the comment and acknowledges that grantees, including TTP grantees, may continue to provide charter service to clients of a Qualified Human Service Organization, as defined at 49 CFR 604.3(q) and in accordance with the provisions of 49 CFR part 604, subpart D.

Comment: Three commenters agreed that FTA apply NTD reporting requirement to the Tribal Transit Program.

Response: 49 U.S.C. 5335 requires NTD reporting for all direct recipients of section 5311 funds. The TTP is a section 5311 program that will provide funds directly to Indian tribes and this reporting requirement will therefore apply. In addition, the data reported to the NTD will be used in the annual formula apportionment for this program.

Comment: Two commenters agreed that Bus Testing safety and operational standards should apply to the TTP.

Response: FTA agrees with the comment. To ensure that vehicles acquired under this program will meet adequate safety and operational standards, FTA's Bus Testing requirements (49 CFR 665) will apply.

Comment: Three commenters disagree with FTA applying Buy America law to the TTP. One commenter stated that there were situations that would prohibit an Indian tribe from meeting the requirement and the current waiver provisions may not be adequate to address specific tribal transit situations. One commenter strongly agreed that any major procurements funded under this program be "Buy America" compliant.

Response: FTA did not apply the Buy America requirement when SAFETEA–LU established the TTP because FTA determined that the relatively small size of the TTP did not justify the application of the Buy America requirement. The TTP, as amended by MAP–21, has, however, doubled the amount of funds available to Indian tribes under the TTP. FTA law requires that all capital procurements by grantees meet FTA's Buy America requirements. Buy America states that all iron, steel, or manufactured products be produced in the U.S. Rolling stock purchases are subject to a minimum of 60 percent domestic content and final assembly requirement in the U.S. Unless FTA approves a waiver, a grantee's compliance with the Buy America law at 49 U.S.C. § 5323(j) and FTA's Buy America implementing regulation at 49 CFR part 661 will help to create and protect manufacturing jobs in the U.S. FTA has therefore determined that MAP–21's TTP will have a more significant economic impact toward meeting the objectives of the Buy America. Therefore, FTA has determined that TTP grantees should now comply with the Buy America requirements (49 CFR part 661) for MAP–21's TTP.

Comment: One commenter recommended that safety plans not be a requirement for FY2013 discretionary funding and an exemption be made in the rulemaking allowing Indian tribes that are currently developing such a plan, but which have not completed or certified a safety plan, still be eligible for funding in FY 2014. Additional comments received agreed with FTA's proposal as the Indian tribes were given an opportunity to submit comments during the rulemaking process.

Response: 49 U.S.C. Section 5329 requires all grantees to develop comprehensive agency safety management plans that at a minimum include methods for identifying and evaluating safety risks, strategies to minimize exposure to hazards and unsafe conditions, and performance targets for safety performance criteria and state of good repairs standards established in a forthcoming National Public Transportation Safety plan. A rulemaking is forthcoming to explain the requirements for the development and certification of agency safety plans. FTA will be finalizing requirements through a subsequent rulemaking later this fiscal year. Tribes are encouraged to submit comments when the notices are published for these rulemakings. Until the rules are finalized, there is no specific safety plan requirement under the program.

Comment: Commenters agreed with FTA's proposal to allow the use of the existing system for capturing their inventory. One commenter stated that each Indian tribe typically insures it has an adequate property management system to procure, maintain capital asset inventory, depreciation schedule, and replace capital assets, and this would be a duplication of asset management should FTA apply this Transit Asset Management requirement.

Response: MAP–21 requires each recipient and subrecipient of FTA grants to establish a "transit asset management" (TAM) plan for its transit system. This requirement, however, would not be a condition for receiving FTA grants until FTA issues its rulemaking.

Comment: Although not solicited, several Indian tribes suggested that FTA should administer grants under this program in a manner that is either the same or similar to contracts and agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA).

Response: FTA recognizes Indian tribes as sovereign governments that can independently administer certain Federal government programs as authorized by the ISDEAA. Although the statutory authority to enter into contracts with Indian tribes under ISDEAA does not include the FTA, FTA will continue to implement the program in a manner consistent with the principles of self-determination that are embodied in ISDEAA. To do so, FTA is streamlining and omitting some of the U.S. Department of Transportation and FTA regulatory requirements that apply to other FTA programs.

Comment: Two commenters suggested it was unfair for FTA to impose requirements under labor laws because each Indian tribe establishes its own fair-labor policies and practices as a function of Tribal Sovereignty. The Indian tribe also suggested that it was unnecessary and onerous to impose such a general requirement on all Indian tribes across the board while ignoring their own process.

Response: Grants awarded under the TTP are subject to a special warranty arrangement established and approved by the U.S. Department of Labor at 29 CFR 215.7 to meet the labor protection requirement at 49 U.S.C. Section 5333(b) which is a condition of financial assistance for grantees under the Section 5311 program. MAP–21 retained this requirement.

Terms and Conditions that do not apply to Tribal Transit Program:

Comment: The majority of commenters agreed with FTA's proposal not to apply Pre-award and post-delivery audits and DBE regulations to the TTP.

Response: FTA will continue to exempt Indian tribes from the pre-award

and post-delivery audit regulation at 49 CFR part 663 and the Disadvantaged Business Enterprise (DBE) regulation at 49 CFR part 26 under MAP–21.

A comprehensive list and description for all of the statutory and regulatory terms and conditions that will apply to the TTP are set forth in FTA's Master Agreement for the Tribal Transit Program available on FTA's Web site at: *http://www.fta.dot.gov.* In addition, as part of their application for grant award, the selected Indian tribes will be required to sign the Certifications.

D. Discretionary Funding Opportunity for FY 2013

FTA is announcing the availability of approximately $5 million in funding provided by the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)). This part of the notice contains a national solicitation for project proposals and includes the selection criteria and program eligibility information for FY 2013 projects, which were developed as a result of the consultation process conducted to date and described earlier in this notice. For FY 2013, FTA anticipates making some exceptions acknowledging this is a transition year for the program and that due to the new formula some tribal recipients that provide transit services are not receiving a formula apportionment. The first is with regards to eligible projects and is described below; the second is regarding the local match that will be required for the discretionary operating and capital requests.

This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA may announce final selections on the Web site and in the **Federal Register**. Additionally, a synopsis of the funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

1. Overview

The Tribal Transit Program was established by section 3013 of SAFETEA–LU and modified under Section 5311(j) of MAP–21, Public Law 112–41 (July 6, 2012). MAP–21 amended the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)) to consist of a $25 million formula allocation and a $5 million discretionary program. The program authorizes direct grants "under such terms and conditions as may be established by the Secretary" to Indian tribes for any purpose eligible under FTA's Rural Areas Formula Program, 49 U.S.C. 5311. Approximately $5 million is available for the Tribal Transit discretionary allocation in FY 2013 to projects selected pursuant to process described in the following sections.

2. Program Purpose

TTP funds are to be allocated for grants to federally recognized Indian tribes for any purpose eligible under the Section 5311 program. Funds distributed to Indian tribes under the TTP should not replace or reduce funds that Indian tribes receive from States through FTA's Section 5311 program. The competitively selected TTP funds may support planning, capital, and limited operating assistance for tribal public transit services. Specific project eligibility under this competitive allocation is described in Section 3–ii below.

3. Program Information

i. Eligible Applicants

Eligible applicants include federally recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the U.S. Department of Interior (DOI), Bureau of Indian Affairs (BIA). As evidence of Federal recognition, an Indian tribe may submit a copy of the most up-to-date **Federal Register** Notice published by DOI, BIA: Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs. To be an eligible recipient, an Indian tribe must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. Applicants must be registered in the System for Award Management (SAM) database (instructions for registration are located under Appendix C) and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by FTA.

ii. Eligible Projects

FTA will award grants to eligible Indian tribes located in non-urbanized, rural areas. Eligible projects include public transportation capital projects for start-ups, replacement or expansion, operating costs for start-ups, and planning. However, FY 2013 will be a transition year for the discretionary program. Exceptions will be made for those Indian tribes who are not receiving a FY 2013 formula apportionment or that only received a Tier 3 allocation. So long as the Indian tribe can demonstrate it provides public transportation, but had not yet reported to the NTD to be included in the FY 2013 formula apportionment, it will be allowed to apply for operating assistance to continue its operations. Indian tribes who currently do not have existing service are permitted to apply for start-up projects consisting of operating and/or capital funding requests. Indian tribes applying for capital replacement or expansion needs must be able to demonstrate they have a sustainable source of operating funds for the existing or expansion services. The acquisition of public transportation services, including service agreements with private providers of public transportation services will also be eligible. Under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., public fixed-route operators are required to provide ADA complementary paratransit service to individuals who are unable to use a fixed route due to their disability or a fixed route being inaccessible. Public transportation includes regular, continuing shared-ride surface transportation services that are open to the public or open to a segment of the public defined by age, disability, or low income. Additionally, eligible applicants may apply for planning grants of up to $25,000 for planning studies.

iii. Cost Sharing or Matching.

The federal share for projects selected under the TTP discretionary program is up to a 90 percent federal share of project costs, unless the Indian tribe can demonstrate a financial hardship in their application. FTA is interested in the Indian tribe's financial commitment to the proposed project and requests Indian tribes include a description of their financial commitment to the proposed project in the proposal. Sources of local match can be found in Section C–3 of this document.

iv. Proposal Content (All Applicants Must Completely Respond to Items in This Section To Be Considered for TTP Funding) Funding Sources That Are Available To Support Puhlic Transportation Service

a. Proposal Submission Process

FTA requires all project proposals be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. EDT on July 8, 2013. Mail and fax submissions will not be accepted. A complete proposal submission will consist of at least two files: (1) The SF 424 Mandatory form (downloaded from GRANTS.GOV) and (2) the Tribal Transit supplemental form found on the FTA Web site at *http://www.fta.dot.gov/tribaltransit.* The Tribal Transit supplemental form provides guidance and a consistent format for applicants to

respond to the criteria outlined in this Notice of Funding Availability (NOFA). Once completed, the applicant must place the supplemental form in the attachments section of the SF 424 Mandatory form. Applicants must use the supplemental form designated for TTP and attach the form to their submission in GRANTS.GOV, to complete the application process. A proposal submission may contain additional supporting documentation as attachments. Within 24–48 hours after submitting an electronic application, the applicant should receive three email messages from GRANTS.GOV: (1) Confirmation of successful transmission to GRANTS.GOV; (2) confirmation of successful validation by GRANTS.GOV; and (3) confirmation of successful validation by FTA. If the applicant does not receive confirmations of successful validation and instead receives a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation or incomplete materials, as described in the notice, and resubmit the proposal before the submission deadline. If making a resubmission for any reason, the applicant must include all original attachments regardless of which attachments are updated and check the box on the supplemental form indicating this is a resubmission.

Complete instructions on the application process can be found at *http://www.fta.dot.gov/tribaltransit*. Important: FTA urges applicants to submit their project proposals at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification. FTA will not accept submissions after the stated submission deadline. GRANTS.GOV scheduled maintenance and outage times are announced on the GRANTS.GOV Web site *http://www.GRANTS.GOV*. The deadline will not be extended due to scheduled maintenance or outages.

Applicants may submit one proposal for each project or one proposal containing multiple projects. Applicants submitting multiple projects in one proposal must be sure to clearly define each project by completing a supplemental form for each project. Additional supplemental forms must be added within the proposal by clicking the "add project" button in Section II of the supplemental form.

Information, such as applicant name, Federal amount requested, description of areas served, and other information may be requested in varying degrees of detail on both the SF 424 form and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should use both the "Check Package for Errors" and the "Validate Form" validation buttons on both forms to check all required fields on the forms, and ensure that the Federal and local amounts specified are consistent. The following information MUST be included on the SF 424 and supplemental forms for all requests for TTP funding:

b. Proposal Information

1. Name of Federally-recognized tribe and, if appropriate, the specific tribal agency submitting the application.

2. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (Note: If selected, applicant will be required to provide DUNS number prior to grant award).

3. Contact information including: Contact name, title, address, congressional district, fax and phone number, and email address if available.

4. Description of public transportation services including areas currently served by the tribe, if any.

5. Name of person(s) authorized to apply on behalf of the tribe (attach a signed transmittal letter) must accompany the proposal.

c. Project Information

1. Project Description

Indicate the category for which funding is requested; i.e., project type: Capital, operating or planning and then indicate the project purpose; i.e., start-up, expansion or replacement. Provide a summary description of the proposed project and how it will be implemented (e.g., number and type of vehicles, routes, service area, schedules, type of services, fixed route or demand responsive), route miles (if fixed route), ridership numbers (actual if an existing system, estimated if a new system), major origins and destinations, population served, and whether the tribe provides the service directly or contracts for services and how vehicles will be maintained.

2. Project Timeline

Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles; facility project phases (e.g., NEPA compliance, design, construction); or dates for completion of planning studies. If applying for operational funding for new services, indicate the period of time funds are used to operate the system (e.g. one year). This section should also include any significant dates for expected tribal council approvals for the projects, if applicable.

3. Budget

Include a detailed budget including the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided. An Indian tribe may allow up to fifteen percent of capital activities of the grant award for specific project-related planning and administration and the indirect costs rate may not exceed ten percent (if necessary add as an attachment) of the total request.

4. Technical, Legal, Financial Capacity

Indian tribes must be able to demonstrate adequate capacity in technical, legal and financial areas to be considered for funding. Every proposal MUST describe the Indian tribe's technical, legal, and financial capacity to implement the proposed project.

i. Technical Capacity: Provide examples of the Indian tribe's management of other Federal projects, including previously funded FTA projects and/or similar types of projects for which funding is being requested. Describe the resources the Indian tribe has to implement the proposed transit project.

ii. Legal Capacity: Provide documentation or other evidence to show that the applicant is a federally recognized Indian tribe and has an authorized representative to execute legal agreements with FTA on behalf of the Indian tribe. If applying for capital or operating funds, identify whether the Indian tribe has appropriate Federal or State operating authority.

iii. Financial Capacity: Identify whether the Indian tribe has adequate financial systems in place to receive and manage a Federal grant. Describe the Indian tribe's financial systems and controls. Describe other sources of funds the Indian tribe manages and describe the long-term financial capacity to maintain the proposed or existing transit services.

v. Evaluation Criteria Operating and Capital Assistance Requests

Applications will be grouped into their respective category for review and scoring purposes. Applicants must address criteria in Sections *a–e* for operating and capital requests. Applicants applying for planning grants must address evaluation criteria in Section *f*.

a. Planning and Local/Regional Prioritization

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for the project and that the applicant is ready to implement the

project if funded. Information may vary depending upon how the planning process for the project was conducted and what is being requested. Planning and local/regional prioritization should consider and address the following areas:

1. Describe the planning document and/or the planning process conducted to identify the proposed project.

2. Provide a detailed project description including the proposed service, vehicle and facility needs, and other pertinent characteristics of the proposed or existing service implementation.

3. Identify existing transportation services in and near the proposed service area and document in detail, whether the proposed project will provide opportunities to coordinate service with existing transit services, including human service agencies, intercity bus services, or other public transit providers.

4. Discuss the level of support by the community and/or tribal government for the proposed project.

5. Describe how the mobility and client-access needs of tribal human service agencies were considered in the planning process.

6. Describe what opportunities for public participation were provided in the planning process and how the proposed transit service or existing service has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

7. Describe how the proposed service complements rather than duplicates any currently available services.

8. Describe the implementation schedule for the proposed project, including period, staffing, and procurement.

9. Describe any other planning or coordination efforts that not mentioned above.

b. Project Readiness

In this section, the applicant should describe the extent to which the project is ready to implement. This will involve assessing whether:

1. Project is a Categorical Exclusion (CE) or the required environmental work has been initiated or completed for construction projects requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under, among others, the National Environmental Policy Act of 1969, as amended.

2. Project implementation plans are complete, including initial design of facilities projects.

3. Project funds can be obligated and the project can be implemented quickly, if selected.

4. Applicant demonstrates the ability to carry out the proposed project successfully.

c. Demonstration of Need

FTA will evaluate each project to determine its needs for resources. In addition to the project-specific criteria, this will include evaluating the project's impact on service delivery and whether the project represents a one-time or periodic need that cannot reasonably be funded from the FTA program formula allocations or State and/or local resources. In this section, the proposal should demonstrate the transit needs of the Indian tribe and discuss how the proposed transit improvements or the new service will address the identified transit needs. Proposals should include information such as destinations and services not currently accessible by transit, needs for access to jobs or health care, special needs of seniors and individuals with disabilities, income-based community needs, or other mobility needs. If an applicant received a planning grant in previous fiscal years, it should indicate the status of the planning study and how the proposed project relates to that study.

Capital expansion or replacement projects should also address the following in the proposal. If the proposal is for capital funding associated with an expansion or expanded service, the applicant should describe how current or growing demand for the service necessitates the expansion (and therefore, more capital) and/or the degree to how the project is addressing a current capacity constraint. Capital replacement projects should include information about the age, condition, and performance of the asset to be replaced by the proposed project and/or how the replacement may be necessary to maintain the transit system in a state of good repair.

d. Demonstration of Benefits

In this section, proposals should identify expected or, in the case of existing service, achieved, project benefits. Possible examples include increased or sustained ridership and daily trips, improved service, improved operations and coordination, increased reliability, and economic benefits to the community. Benefits can be demonstrated by identifying the population of tribal members and non-tribal members in the proposed project service area and estimating the number of daily one-way trips the proposed transit service will provide or the actual number of individual riders and trips on existing service. There may be many other, less quantifiable, benefits to the Indian tribe and surrounding community from the proposed project. Applicants should document, explain, or show the benefits in whatever format is reasonable to present them. Based on the information provided, proposals will be rated based on four factors:

1. Will the project improve transit efficiency or increase ridership?

2. Will the project improve or maintain mobility for the Indian tribe?

3. Will the project improve or maintain access to important destinations and services?

4. Are there other qualitative benefits?

e. Financial Commitment and Operating Capacity

In this section, the proposal should identify the source of local match (10 percent is required for all operating and capital projects), and any other funding sources used by the Indian tribe to support proposed transit services, including human service transportation funding, Indian Reservation Roads, or other FTA programs. If requesting the local match to be waived based on financial hardship, the applicant must submit budgets and sources of other revenue to demonstrate hardship. If applicable, the applicant should also describe how prior year TTP funds have been spent to date to support the service. Additionally, Indian tribes applying for operating of new services should provide a sustainable funding plan that demonstrates how it intends to maintain operations.

The proposal should describe any other resources the Indian tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources, and describe to what extent the new project or funding for existing service leverages other funding. Based upon the information provided, the proposals will be rated on the extent to which the proposal demonstrates that:

1. TTP Funding does not replace existing funding.

1. The Indian tribe will provide non-financial support to the project;

2. Indian tribe's ability to demonstrate a sustainable funding plan; and

3. Project funds are used in coordination with other services for efficient utilization of funds.

f. Evaluation Criteria for Planning Proposals

For planning grants, the proposal should describe, in no more than three pages, the need for and a general scope of the proposed study. The proposal should also address the following:

1. What the tribes' long-term commitment to transit is?

2. How the proposed study will be implemented and/or further tribal transit.

vi. Review and Selection Process

A technical evaluation committee will review proposals under the project evaluation criteria. Members of the technical evaluation committee and other involved FTA staff reserve the right to screen and rate the applications it receives and to seek clarification from any applicant about any statement in its application that FTA finds ambiguous and/or request additional documentation to be considered during the evaluation process to clarify information contained within the proposal. After consideration of the findings of the technical evaluation committee, the FTA Administrator will determine the final selection and amount of funding for each project. Geographic diversity and the applicant's receipt and management of other discretionary awards may be considered in FTA's award decisions. FTA expects to announce the selected projects and notify successful applicants by September 2013. Once successful applicants are announced, they will work with the appropriate Regional office to develop a grant application consistent with the selected proposal in FTA's Transportation Electronic Award Management System (TEAM).

4. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section 3–ii. Due to funding limitations, applicants that are selected for funding may receive less than the amount requested. Complete applications must be submitted through GRANTS.GOV by July 8, 2013.

Applicants may receive technical assistance for application development by contacting their FTA regional tribal liaison, or the National Rural Transportation Assistance Program office (Appendix B). Contact information for FTA's regional offices can be found on FTA's Web site at *www.fta.dot.gov.* A list of FTA regional Tribal Liaisons are included in Appendix A.

Peter Rogoff,

Administrator.

Appendix B

TECHNICAL ASSISTANCE CONTACTS

Alaska Tribal Technical Assistance Program, Kim Williams, University of Alaska, Fairbanks, P.O. Box 756720, Fairbanks, AK 99775–6720, (907) 842–2521, (907) 474–5208, *williams@nushtel.net, http://community.uaf.edu/~alaskattac,* Service area: Alaska.	Northern Plains Tribal Technical Assistance Program, Dennis Trusty, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504, (701) 255–3285 ext. 1262, (701) 530–0635, *nddennis@hotmail.com, http://www.uttc.edu/forum/ttap/ttap.asp,* Service area: Montana (Eastern), Nebraska (Northern), North Dakota, South Dakota, Wyoming.
National Indian Justice Center, Raquelle Myers, 5250 Aero Drive, Santa Rosa, CA 95403, (707) 579–5507 or (800) 966–0662, (707) 579–9019, *nijc@aol.com, http://www.nijc.org/ttap.html,* Service area: California, Nevada.	Northwest Tribal Technical, Assistance Program, Richard A. Rolland, Eastern Washington University, Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004, (800) 583–3187, (509) 359–7485, *rrolland@ewu.edu, http://www.ewu.edu/TTAP/,* Service area: Idaho, Montana, (Western), Oregon, Washington.
Tribal Technical Assistance Program at Colorado State University, Ronald Hall, Rockwell Hall, Room 321, Colorado State University, Fort Collins, CO 80523–1276, (800) 262–7623, (970) 491–3502, *ronald.hall@colostate.edu, http://ttap.colostate.edu/,* Service area: Arizona, Colorado, New, Mexico, Utah.	Tribal Technical Assistance Program at Oklahoma State University, James Self, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001, (405) 744–6049, (405) 744–7268, *jim.self@okstate.edu, http://ttap.okstate.edu/,* Service area: Kansas, Nebraska, (Southern), Oklahoma, Texas.
Tribal Technical Assistance Program (TTAP), Bernie D. Alkire, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931–1295, (888) 230–0688, (906) 487–1834, *balkire@mtu.edu, http://www.ttap.mtu.edu/,* Service area: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania.	National RTAP (National Rural Transit Assistance Program), Contact: Patti Monahan, National RTAP, 5 Wheeling Ave., Woburn, MA 01801, (781) 404–5015 (Direct), (781) 895–1122 (Fax), (888) 589–6821 (Toll Free), *pmonahan@nationalrtap.org, www.nationalrtap.org*
Community Transportation Association of America, The Resource Center—800–891–0590, *http://www.ctaa.org/.*	

Appendix C

Registering in SAM and Grants.Gov

Registration in Brief:

Registration takes approximately 3–5 business days, please allow 4 weeks for completion of all steps.

In order to apply for a grant, you and/or your organization must first complete the registration process in Grants.gov. The registration process for an Organization or an Individual can take between three to five business days or as long as four weeks if all steps are not completed in a timely manner. So please register in Grants.gov early.

The Grants.gov registration process ensures that applicants for Federal Funds have the basic prerequisites to apply for and to receive federal funds. Applicants for FTA discretionary funds must:

- Have a valid DUNS number
- Have a current registration in SAM (formerly CCR)
- Register and apply in Grants.gov

The required registration steps are described in greater detail on Grants.gov Web site. The following is a link to a helpful checklist and explanations published by Grants.gov to assist applicants: Organization Registration Checklist. If you have not recently applied for federal funds, we recommend that you initiate your search,

registration, and application process with Grants.gov. Visiting the Grants.gov site will inform you of how to apply for grant opportunities, as well as assist you in linking to the other required registrations, i.e., Dun & Bradstreet to obtain a DUNS Number, and System for Award Management (SAM).

Summary of steps (these steps are available in Grants.gov during registration):

STEP 1: Obtain DUNS Number

Same day. If requested by phone (1–866–705–5711) DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet Web site at *http://fedgov.dnb.com/webform* to obtain the number.

STEP 2: Register with SAM

Three to five business days or up to two weeks. If you already have a TIN, your SAM registration will take 3–5 business days to process. If you are applying for an EIN please allow up to 2 weeks. Ensure that your organization is registered with the System for Award Management (SAM) at System for Award Management (SAM). If your organization is not, an authorizing official of your organization must register.

STEP 3: Establish an Account in Grants.gov—Username & Password

Same day. Complete your AOR (Authorized Organization Representative) profile on Grants.gov and create your username and password. You will need to use your organization's DUNS Number to complete this step. *https://apply07.grants.gov/apply/OrcRegister.*

STEP 4: Grants.gov—AOR Authorization

*Same day. The E-Business Point of Contact (E-Biz POC) at your organization must login to Grants.gov to confirm you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for your organization. In some cases the E-Biz POC is also the AOR for an organization. *Time depends on responsiveness of your E-Biz POC.

*Please Note: Grants.gov gives you the option of registering as an "individual" or as an "organization." If you register in Grants.gov as an as an "Individual," your "Organization" will not be allowed to use the Grants.gov username and password. To apply for grants as an Organization you must register as an Organization and use that specific username and password issued during the "organization" registration process.

[FR Doc. 2013–11053 Filed 5–8–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review, Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, on behalf of itself and the United States Bureau of Engraving and Printing (BEP) and as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on one new proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The BEP has requested and received approval for a generic clearance to conduct conference studies and focus groups. This generic clearance has allowed the BEP to collect information from attendees of conferences and gatherings for persons who are blind and visually impaired about which tactile features most effectively provide meaningful access to denominate United States paper currency. The new clearance will allow the BEP to engage in a scientific study that will help gauge the acuity with which blind and visually impaired persons can denominate United States paper currency using various, tactile features currently being evaluated. Initially, the BEP had planned to request a second generic clearance for the scientific study, allowing flexibility for multiple iterations and different protocols. However, given the results of research and the smaller studies conducted with the first generic clearance, BEP will request a stand-alone clearance for a more focused study. The 60-day notice for the initial generic clearance was published in the **Federal Register** on January 30, 2012 (77 FR 4626). No comments were received.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Comments regarding these information collections should be addressed to the BEP Contact listed below and to the Treasury Department PRA Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Sidney Rocke, Deputy Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, by telephone at 202–874–2306, or by email at *sidney.rocke@bep.gov.*

SUPPLEMENTARY INFORMATION:

Title: Study for Meaningful Access Determination.

OMB Control Number: NEW.

Abstract: A court order was issued in *American Council of the Blind* v. *Paulson,* 591 F. Supp. 2d 1 (D.D.C. 2008) ("*ACB* v. *Paulson*") requiring the Department of the Treasury and BEP to "provide meaningful access to United States currency for blind and other visually impaired persons, which steps shall be completed, in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury . . ."

In compliance with the court's order, BEP intends to meet individually with blind and visually impaired persons and request their feedback about tactile features that BEP is considering for possible incorporation into the next U.S. paper currency redesign. BEP employees will attend national conventions and conferences for disabled persons.

The BEP intends to contract with a specialist in the field of tactile acuity to conduct scientific tests. The specialist contracted with by the BEP will conduct acuity testing with select groups of blind and visually impaired volunteers. The acuity tests will help either confirm or provide other perspectives on the results of BEP's information collections at national conferences and conventions. The acuity tests will also help provide a scientific basis on which BEP determines the tactile feature to be incorporated into the next United States paper currency design.

The BEP's information collection activities at national conferences may use identical methodologies or otherwise share a common element as those employed by a specialist contracted with by BEP to perform a scientific acuity study.

Type of Review: New Collection.

Affected Public: Individuals, Organizations.

Respondent's Obligation: Voluntary.

The study will likely involve up to 500 subjects. Each individual data collection session will be approximately 60 minutes long.

Estimated Average Time per Respondent: 60 minutes per response.

Estimated Total Annual Burden Hours: Approximately 500 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burden of the proposed information collection; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the

reporting burdens on respondents, including the use of automated collection techniques or other forms of information technology.

Direct Comments To: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

Robert Dahl,

Treasury Department PRA Clearance Officer.

[FR Doc. 2013–11013 Filed 5–8–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning an existing revenue procedure, RP 2009–37, Internal Revenue Code Section 108(i) Election, and Treasury Decision 9498.

DATES: Written comments should be received on or before July 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Gerald J. Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)927–4374, or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Internal Revenue Code Section 108(i) Election.

OMB Number: 1545–2147.

Regulation Project Number: TD 9498; Revenue Procedure 2009–37.

Abstract: The law allows taxpayers to defer for 5 years taxation of certain income arising in 2009 or 2010. Taxpayers then must include the deferred amount in income ratably over 5 years. The election statement advises that a taxpayer makes the election and the election and information statements provide information necessary to track the income. Respondents are C corporations and other persons in a business that reacquire debt instruments.

Current Actions: There is no change to this Treasury Decision or revenue procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2013.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–10997 Filed 5–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

DATES: Written comments should be received on or before July 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, (202) 622–3186, at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

OMB Number: 1545–0159.

Form Number: Form 3520.

Abstract: U.S. persons who create a foreign trust or transfer property to a foreign trust must file Form 3520 to report the establishment of the trust or the transfer of property to the trust. Form 3520 must also be filed by U.S. persons who are treated as owners of any part of the assets of a trust under subpart E of Part I or subchapter J of Chapter 1; who received a distribution from a foreign trust; or who received large gifts during the tax year from a foreign person.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 54 hours 35 minutes.

Estimated Total Annual Burden Hours: 72,059.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–10995 Filed 5–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–12, Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.

DATES: Written comments should be received on or before July 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Gerald J. Shields, (202) 927–4374, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.

OMB Number: 1545–1597.

Revenue Procedure Number: 2000–12 (Revenue Procedure 2000–12 is modified by Announcement 2000–50, Revenue Procedure 2003–64, Revenue Procedure 2004–21, and Revenue Procedure 2005–77.)

Abstract: This revenue procedure gives guidance for entering into a withholding agreement with the IRS to be treated as a Qualified Intermediary (QI) under regulation section 1.1441–1(e)(5). It describes the application procedures for becoming a QI and the terms that the IRS will ordinarily require in a QI withholding agreement. The objective of a QI withholding agreement is to simplify withholding and reporting obligations with respect to payments of income made to an account holder through one or more foreign intermediaries.

Current Actions: Revenue Procedure 2000–12 is modified by Announcement 2000–50, Revenue Procedure 2003–64, Revenue Procedure 2004–21, and Revenue Procedure 2005–77.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 1,097,991.

Estimated Time for QI Account Holder: 30 minutes.

Estimated Time for a QI: 2,093 hours.

Estimated Total Annual Reporting/ Recordkeeping Hours: 301,018.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 2013.

Yvette B. Lawrence,

Supervisory Tax Analyst, IRS Reports Clearance Officer.

[FR Doc. 2013–10992 Filed 5–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

DATES: Written comments should be received on or before July 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–4374, or through the Internet at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

OMB Number: 1545–1056.

Regulation Project Number: REG–209020–86 (formerly INTL–61–86).

Abstract: This regulation relates to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

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Approved: April 18, 2013.

Yvette B. Lawrence,

Supervisory Tax Analyst, IRS Reports Clearance Officer.

[FR Doc. 2013–10996 Filed 5–8–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Thursday,
No. 90 May 9, 2013

Part II

The President

Notice of May 7, 2013—Continuation of the National Emergency With Respect to the Actions of the Government of Syria

Federal Register
Vol. 78, No. 90
Thursday, May 9, 2013

Presidential Documents

Title 3—

The President

Notice of May 7, 2013

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or re-exportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

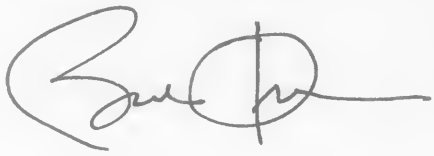
The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

While the Syrian regime has reduced the number of foreign fighters bound for Iraq, the regime's brutal war on the Syrian people, who have been calling for freedom and a representative government, endangers not only the Syrian people themselves, but could yield greater instability throughout the region. The Syrian regime's actions and policies, including pursuing chemical and biological weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in Executive Order 13338; on April 25, 2006, in Executive Order 13399; on February 13, 2008, in Executive Order 13460; on April 29, 2011, in Executive Order 13572; on May 18, 2011, in Executive Order 13573; on August 17, 2011, in Executive Order 13582; on April 22, 2012, in Executive Order 13606; and on May 1, 2012, in Executive Order 13608; must continue in effect beyond May 11, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Asad regime's use of brutal violence and human rights abuses and calls on the Asad regime to stop its violent war and step aside to allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 7, 2013.

[FR Doc. 2013–11225
Filed 5–8–13; 11:15 am]
Billing code 3295–F3

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Federal Register

Vol. 78, No. 90

Thursday, May 9, 2013

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H.R. 1246/P.L. 113–8
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Last List April 17, 2013

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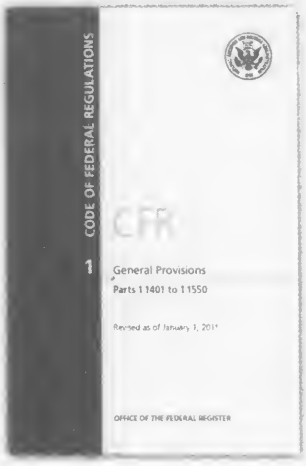

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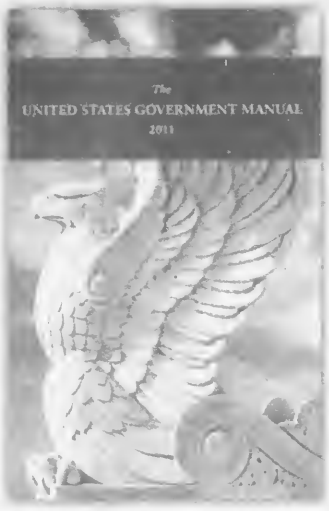

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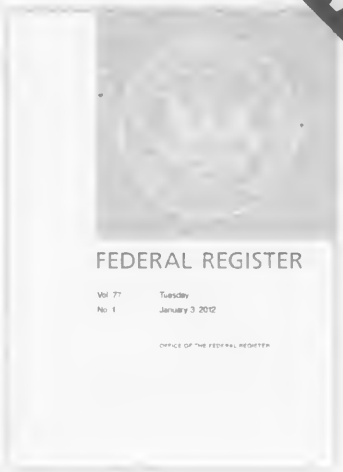

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