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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0055]

RIN 0579–AD53

Controlled Import Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of plants and plant products by establishing the controlled import permit as a single type of authorization for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes. Currently, some sections of the regulations provide for those articles to be imported under a departmental permit, while other sections provide for their importation under administrative instructions or conditions specified by the Administrator or Deputy Administrator. This action will consolidate and harmonize the conditions for obtaining authorization for the importation of otherwise prohibited or restricted plant material for scientific or certain other purposes.

DATES: Effective Date: June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. William Aley, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2130.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR part 319, Foreign Quarantine Notices, prohibit or restrict the importation into the United States of certain plants and plant products to prevent plant pests and noxious weeds from being introduced into and spread within the United States.

On October 25, 2011, we published in the **Federal Register** (76 FR 65976–65985, Docket No. APHIS–2008–0055) a proposal [1] to amend the regulations by establishing the controlled import permit (CIP) as the permit that would be used in place of departmental permits and the other types of authorizations that we have used to allow the importation of otherwise prohibited articles or of articles under different conditions than those found in the regulations. We also proposed the CIP as the form of permit required for the importation of plant materials for postentry quarantine (PEQ).

We solicited comments concerning our proposal for 60 days ending December 27, 2011. We received eight comments by that date. They were from a State department of agriculture, plant nursery associations, a biotechnology firm, an organization of State plant regulatory agencies, and a member of the general public. Two commenters supported the proposed action. One commenter opposed the establishment of the CIP without raising any issues related to the proposed rule. The remaining comments are discussed below by topic.

One commenter expressed support for the proposed rule while suggesting that the new CIP and the new regulatory category for plants for planting whose importation is not authorized pending pest risk analysis (NAPPRA) be implemented simultaneously.

We agree that the CIP and NAPPRA are related initiatives, and we have made significant progress in implementing both. A notice adding certain taxa of plants for planting to the NAPPRA lists was published in the **Federal Register** on April 18, 2013 (78 FR 23209–23219, Docket No. APHIS–2011–0072), and their addition to the NAPPRA lists will be effective on May 20, 2013; this final rule, establishing the CIP program, will be effective 30 days from its date of publication.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2008–0055.*

Pre-Shipping Conditions

We proposed to require plant material imported under a CIP to be selected from apparently disease-free sources. One commenter asked how ''apparently disease free source'' is defined.

''Apparently disease-free'' status is specific to each type and taxon of plant material. The importer will specify how it will meet the ''apparently disease-free'' requirement in the CIP application, and the CIP application will be reviewed by the Animal and Plant Health Inspection Service (APHIS) before a CIP is issued.

One commenter asked if APHIS will inspect the source facility of the articles for which the CIP is issued.

In most cases, APHIS does not inspect foreign facilities. The United States is a signatory to the International Plant Protection Convention and cooperates with the national plant protection organizations (NPPO) of our trading partners to ensure that plant material exported to the United States meets any pre-export requirements that may be assigned as a condition of the permit, such as the inspection of a source facility. In some cases, APHIS may jointly inspect a facility with officials of the exporting country's NPPO.

Shipping Conditions

A commenter said that the proposed CIP shipping conditions, which require the plant material to be free of soil, foreign matter or debris, prohibited plants, noxious weed seeds, and living organisms, contradict the proposed definition of *therapeutic purposes,* which allows the application of specific processes to eliminate, isolate, or remove potential plant pests or diseases.

Unless otherwise specified under the conditions of the CIP, consignments of plant material imported under a CIP must meet certain shipping requirements, including the requirement that the plant material be free of living organisms. However, an importer of plant material intended for therapeutic purposes may specify in the CIP application different shipping conditions for the specific article (for example, an importer could apply to import material infected with a plant disease to test diagnostic techniques.). APHIS will review the proposed shipping conditions and may issue a CIP for the alternate shipping conditions.

Mitigation of Pest Risk

Two commenters asked for clarification on how APHIS will determine that the plant pest risks associated with the plant material and its intended use can be effectively mitigated.

Mitigation of the risk associated with prohibited or restricted articles varies by commodity and origin and will be determined on a case-by-case basis. APHIS' goal is to permit importation of an otherwise prohibited or restricted plant only after scientists and risk evaluation experts have reviewed and approved the measures that the applicant proposes to reduce the likelihood of pest importation to an acceptable level. The importer will provide the proposed mitigation strategy in the CIP application. APHIS will use information provided by the permit applicant and a review of scientific literature to determine whether the proposed control measures would adequately address the identified risks. APHIS will communicate with the importer throughout the review process. The CIP would specify the required mitigation measures that are identified as necessary by APHIS based upon the intended use of the plant material and as being adequate to prevent plant pest introduction.

Post Entry Quarantine

Under § 319.37–7, certain restricted articles from designated areas must be grown under specific post entry quarantine (PEQ) conditions and may be imported into the United States only if: The articles are destined for a State that has completed a State PEQ growing agreement; a PEQ growing agreement has been completed and submitted to the Plant Protection and Quarantine (PPQ) program; and PPQ has determined that the completed PEQ growing agreement fulfills the applicable requirements and that services by State inspectors are available to monitor and enforce the post entry quarantine.

We proposed that PEQ material be imported with a CIP, rather than the permit normally issued for planting under § 319.37–3, in addition to a PEQ growing agreement. One commenter stated that, while the proposed rule specifies that a CIP may be issued to authorize the importation of plant material for developmental purposes, experimental purposes, or therapeutic purposes, PEQ material is rarely brought in for any of these purposes. The commenter stated that PEQ material is imported because the material is not available domestically, is not available in a specific caliper or phenological state domestically, or is cheaper to acquire from a foreign source. The commenter suggested that the proposed rule be amended to exempt plants currently imported under the PEQ provisions in § 319.37–7 from the requirement that plants imported under a CIP be imported for developmental, experimental, or therapeutic purposes.

The purpose of a PEQ agreement is to allow for monitoring of consignments after entry into the country for the presence of pests, time for the expression of signs or symptoms, and, if necessary, appropriate treatment.

We proposed to define *developmental purposes* as the evaluation, monitoring, or verification of plant material for plant health risks and/or the adaptability of the material for certain uses or environments. The term is intended to be of wide scope and will not exclusively cover material for scientific or experimental uses. Given that, we continue to believe that the CIP is the appropriate type of permit for the importation of plant material that will be held in PEQ.

One commenter said that most PEQ material requires two growing season inspections, which take more than 1 year of growth in PEQ to conduct. The commenter said that, because a CIP would be valid for a period of 1 year, the CIP would require a permit renewal for most PEQ material, resulting in permit lapses and additional administrative work for both the permit holder and the agencies.

As specified in § 319.37–7(d)(7) of the regulations, most articles that are imported under a PEQ agreement must be grown in PEQ for a period of 2 years. While a CIP requires plant material to be imported within a specified 12-month period, any additional time necessary to complete the evaluation process after importation will be specified in the application and the permit. Therefore, multiple CIPs for a single shipment of PEQ material will not be necessary.

One commenter said that requiring a CIP to accompany material imported for monitoring under a PEQ agreement could result in each lot of PEQ plants having a different set of growing conditions, complicating both the inspection and production processes and increasing the rate of errors and non-compliance at the growing site.

We do not believe the problems cited by the commenter will arise. The same plant material shipped for the same purpose would by definition have the same growing conditions, which will be specified in the accompanying CIP.

Post-Importation Conditions

Some comments concerned the post-importation conditions associated with the CIP. As explained in the proposed rule, we may require that the plant material imported under a CIP be transported from the plant inspection station through which it is imported for release only to preapproved facilities depending on the intended purpose of the plant material and the risks associated its importation.

One commenter opposed the proposed rule citing a lack of information on what constitutes an approved facility. The commenter expressed concern about the possible risk to his State's agricultural production if appropriate containment facilities are not in place.

Because risks are specific to each taxon and type of plant material, the criteria for an approved facility will vary depending on the plant material that will be maintained in the given facility and the plant material's intended use. Prior to issuing a CIP, APHIS will consider the risks associated with imported plant material and assign conditions, including facility infrastructure and equipment requirements, determined to be sufficient. APHIS will work with the applicant to ensure that those conditions or equivalent measures can be instituted by the applicant prior to issuance of the permit. It is APHIS policy to work with State officials in order to identify and address any concerns prior to the issuance of the permit.

One commenter asked about the requirements for obtaining permission to transfer a CIP from the original permit holder to another person and if APHIS would grant permission to transfer the material to another person only if the permit conditions remain the same, or if the material could be distributed commercially for planting or as breeding stock.

If import materials are transferred from the original CIP holder to another person, the person to whom the materials are transferred is bound by the requirements of the original CIP. Permission to move or distribute plant material that was authorized for importation under a CIP to another person can be obtained by contacting the PPQ Permit Unit. We have added language to paragraph (e)(5) of § 319.6 explaining that, should the permit holder be otherwise unavailable to maintain the plant material for which the CIP was issued, the plant material must be destroyed unless another person assumes responsibility for the

continued maintenance of the plant material and such person obtains a new CIP for the plant material.

Two commenters asked if material held under CIP and/or PEQ may be commercialized once released from permit.

Plant material or material propagated from plant material that is imported with the intent to be used for commercial purposes would fall under the category of importation for developmental purposes. The importer must state in the CIP application that he intends to commercialize the article. If APHIS approves the CIP application with this condition, then the article may be commercialized after the CIP is closed and the imported material is released from the corresponding PEQ agreement.

CIP Reporting

One commenter said that she understood that the current departmental permit could be used for multiple importations of the same material and would be valid for a period of 5 years. The commenter noted that the proposed CIP would require the importer to apply for a separate and unique CIP for each and every shipment, would be valid for 1 year, and would involve annual inspections and reporting, which have not been required for permits in the past.

While in some instances importers have imported multiple shipments under a single departmental permit, we note that the intent of the regulations always has been that a permit be issued for each importation. We are retaining this requirement for the CIP.

The time period for a valid import permit is not being changed. The existing APHIS departmental permits are valid for 1 year, not 5 years. A CIP will be valid for 1 year, and the CIP holder may request the permit be renewed for an additional 2 years. Importers will be required to conduct an annual inspection and submit an annual report in order to allow APHIS to better track the importation of plant materials for which a permit is issued.

Permits for Plants for Planting

One commenter asked what will happen to the provisions in §§ 319.37–3(a)(3) through 319.37–3(a)(19) when they are replaced by § 319.6. The commenter asked that the agency permitting process continue to apply these regional prohibitions to protect key plant industries and natural resources from exotic pests and pathogens.

Section 319.37–3 requires a permit for the importation of plants for planting. Paragraphs (a)(3) through (a)(19) of § 319.37–3, which specify various categories of plants for planting whose importation requires a permit, will not be replaced or changed in any way. The only changes proposed for this section are the revision of paragraph (d) and the addition of paragraphs (g) and (h). The CIP does not remove or change quarantine requirements previously established through scientific review. In paragraph (d), we are replacing the term ''Deputy Administrator'' with ''Administrator'' and making minor editorial changes. New paragraph (g) will require a CIP for articles imported for experimental, therapeutic, or developmental purposes, while new paragraph (h) will require that materials grown under a PEQ to also have a CIP.

Hearings

In our proposed rule, proposed paragraph (g)(5) of § 319.6 specified the appeals process for individuals who have their application for a permit denied or permit revoked. The paragraph specified that a hearing could be held in certain instances. To reflect current Agency practices, we have removed references to such a hearing in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities potentially affected by this rule are classified within the following industries: Nursery and Tree Production (NAICS 111421), and Floriculture Production (NAICS 111422). The nursery and floriculture industries are representative of other agricultural and non-agricultural industries in terms of being comprised largely of small entities. According to the Census of Agriculture, these 2 categories included 52,845 farms in 2007, and represented 3 percent of all farms in the United States. These entities are considered small by SBA standards if their annual sales are $750,000 or less. Over 93 percent of the farms in these industries had annual sales of less than $500,000.

Research and development establishments within Physical, Engineering, and Life Sciences (NAICS 541711) that provide professional, scientific, and technical services may also be affected by this rule. These entities are considered small by SBA standards if they employ not more than 500 persons. According to the 2007 Economic Census, 82 percent of these establishments are small.

The CIP would replace the departmental permits and other types of authorizations that we have used to allow the importation of otherwise prohibited articles or of articles under different conditions other than in the current regulations. In addition, the CIP will be used as a form of permit required for the importation of plant materials for postentry quarantine (PEQ). Because this is an administrative change, we do not anticipate that the replacement would have any significant economic impact on the concerned entities. From January 1, 2007, to December 31, 2009, a total of 108 postentry quarantine permits and 1,012 Departmental permits were issued. The final rule is not expected to affect the number of permits issued.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under control number 0579–0384, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to

compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new subpart consisting of § 319.6 is added to read as follows:

Subpart—Controlled Import Permits

§ 319.6 Controlled import permits.

(a) *Definitions.*

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Developmental purposes. The evaluation, monitoring, or verification of plant material for plant health risks and/or the adaptability of the material for certain uses or environments.

Experimental purposes. Scientific testing which utilizes collected data and employs analytical processes under controlled conditions to create qualitative or quantitative results.

Therapeutic purposes. The application of specific scientific processes designed to eliminate, isolate, or remove potential plant pests or diseases.

(b) *Purpose and scope.* The regulations in this part prohibit or restrict the importation into the United States of certain plants, plant products, and other articles to prevent the introduction and dissemination of plant pests and noxious weeds within and throughout the United States. The regulations in this subpart provide a process under which a controlled import permit (CIP) may be issued to authorize the importation, for experimental, therapeutic, or developmental purposes, of an article whose importation is prohibited under this part. A CIP may also be issued to authorize, for those same purposes, the importation of an article under conditions that differ from those prescribed in the relevant regulations in this part.

(c) *Application process.* Applications for a CIP are available without charge from the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737–1236, or from local PPQ offices. Applications may be submitted by mail, by fax, or electronically and must be submitted at least 60 days prior to arrival of the article at the port of entry. Mailed applications must be submitted to the address above, faxed applications may be submitted to 301–734–4300, and electronic applications may be submitted through the ePermits Web site at *https://epermits.aphis.usda.gov/epermits.*

(1) The completed application for a CIP must provide the following information:

(i) Name, address in the United States, and contact information of the applicant;

(ii) Identity (common and botanical [genus and species] names) of the plant material to be imported, quantity of importation, country of origin, and country shipped from;

(iii) Intended experimental, therapeutic, or developmental purpose for the importation; and

(iv) Intended ports of export and entry, means of conveyance, and estimated date of arrival.

(2) APHIS may issue a CIP if the Administrator determines that the plant pest risks associated with the plant material and its intended experimental, therapeutic, or developmental use can be effectively mitigated. The CIP will contain the applicable conditions for importation and subsequent handling of the plant material if it is deemed eligible to be imported into the United States, including the specifications for the facility where the plant will be held. The plant material may be imported only if all applicable requirements are met.

(d) *Shipping conditions.* Consignments of plant material to be offered for importation under a CIP must meet the following requirements, unless otherwise specified under the conditions of the CIP:

(1) The plant material must be selected from apparently disease-free and pest-free sources.

(2) The plant material must be free of soil, other foreign matter or debris, other prohibited plants, noxious weed seeds, and living organisms such as parasitic plants, pathogens, insects, snails, and mites.

(3) Fungicides, insecticides, and other treatments such as coatings, dips, or sprayings must not be applied before shipment, unless otherwise specified. Plant materials may be refused entry if they are difficult or hazardous to inspect because of the presence of such treatments. Plant materials must not be wrapped or otherwise packaged in a manner that impedes or prevents adequate inspection or treatment.

(4) The plant material must be moved in an enclosed container or one completely enclosed by a covering adequate to prevent the possible escape or introduction of plant pests during shipment. Any packing material used in the consignment of the plant material must meet the requirements of § 319.37–9, and wood packing material used in the consignment must meet the requirements of § 319.40–3(b) and (c).

(5) Consignments may be shipped as cargo, by mail or air freight, or hand-carried, as specified in the conditions of the CIP.

(6) The plant material must be offered for importation at the port of entry or plant inspection station as specified in the conditions of the CIP.

(7) A copy of the CIP must accompany each consignment, and all consignments must be labeled in accordance with instructions in the CIP.

(8) Each consignment must be accompanied by an invoice or packing list indicating its contents.

(e) *Post-importation conditions.* (1) At the approved facility where the plant material will be maintained following its importation, plant material imported under a CIP must be identified and labeled as quarantined material to be used only in accordance with a valid CIP.

(2) Plant material must be stored in a secure place or in the manner indicated in the CIP and be under the supervision and control of the permit holder. During regular business hours, properly identified officials, either Federal or State, must be allowed to inspect the plant material and the facilities in which the plant material is maintained.

(3) The permit holder must keep the permit valid for the duration of the authorized experimental, therapeutic, or developmental purpose. The PPQ Permit Unit must be informed of a change in contact information for the permit holder within 10 business days of such change.

(4) Plant material imported under a CIP must not be moved or distributed to another person without prior written permission from the PPQ Permit Unit.

(5) Should the permit holder leave the institution in which the plant material imported under a CIP is kept, the plant material must be destroyed unless, prior to the departure of the original permit holder, another person assumes responsibility for the continued maintenance of the plant material and such person obtains a new CIP for the plant material. Should the permit holder be otherwise unavailable to maintain the plant material for which the CIP was issued, the plant material must be destroyed unless another person assumes responsibility for the continued maintenance of the plant material and such person obtains a new CIP for the plant material. Permission to move or distribute plant material that was authorized for importation under a CIP to another person must be obtained by contacting the PPQ Permit Unit.

(6) CIPs issued by APHIS are valid for a period of 1 year. The permittee may request the existing permit be renewed for up to an additional 2 years prior to the expiration of the CIP and if no adverse indications exist from the previous year.

(f) Failure to comply with all of the conditions specified in the CIP or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of future permits, and civil or criminal penalties for the permit holder.

(g) *Denial and revocation of a CIP.* (1) The Administrator may deny an application for a CIP, orally or in writing, when the Administrator determines that:

(i) No safeguards adequate or appropriate to prevent the dissemination of a plant pest or plant disease can be implemented;

(ii) The applicant, as a previous permittee, failed to maintain the safeguards or otherwise comply with all the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future;

(iii) The application for a permit is found to be false or deceptive in any material particular;

(iv) Such an importation would involve the potential dissemination of a plant pest or plant disease which outweighs the probable benefit that could be derived from the proposed importation and use of the regulated plant material;

(v) The importation is adverse to the conduct of an APHIS eradication, suppression, control, or regulatory program; or

(vi) The government of the State or Territory into which the plant material would be imported objects to the proposed importation and provides a written explanation of its concerns based on plant pest risks.

(2) The Administrator will revoke any outstanding CIP, orally or in writing, when the Administrator determines that:

(i) Information is received subsequent to the issuance of the CIP of circumstances that would constitute cause for the denial of an application under paragraph (g)(1) of this section; or

(ii) The permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the CIP or in any applicable regulations or administrative instructions.

(3) Upon revocation of a permit, the permittee must either:

(i) Surrender all regulated plant material covered by the revoked CIP to an APHIS inspector;

(ii) Destroy all regulated plant material covered by the revoked CIP under the supervision of an APHIS inspector; or

(iii) Remove all regulated plant material covered by the revoked CIP from the United States.

(4) All denials of an application for a permit, or revocation of an existing permit, will be forwarded to the applicant or permittee in writing. The reasons for the denial or revocation will be stated in writing as promptly as circumstances permit.

(5) Any person whose application for a permit has been denied or permit has been revoked may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the denial or revocation. The appeal should state all facts and reasons upon which the person relies to show that the denial or revocation was wrongfully denied or revoked. The Administrator will grant or deny the appeal, in writing, as promptly as circumstances permit, and will state in writing the reason for the decision.

(Approved by the Office of Management and Budget under control number 0579–0384)

■ 3. Section 319.8 is revised to read as follows:

§ 319.8 Notice of quarantine.

Pursuant to sections 411–414 and 434 of the Plant Protection Act (7 U.S.C. 7711–7714 and 7754), the Administrator of the Animal and Plant Health Inspection Service has determined that the unrestricted importation into the United States from all foreign countries and localities of any parts or products of plants of the genus *Gossypium,* including seed cotton; cottonseed; cotton lint, linters, and other forms of cotton fiber (not including yarn, thread, and cloth); cottonseed hulls, cake, meal, and other cottonseed products, except oil; cotton waste, including gin waste and thread waste; any other unmanufactured parts of cotton plants; second-hand burlap and other fabrics, shredded or otherwise, that have been used or are of the kinds ordinarily used, for containing cotton, grains (including grain products), field seeds, agricultural roots, rhizomes, tubers, or other underground crops, may result in the entry into the United States of the pink bollworm (*Pectinophora gossypiella* (Saund.)), the golden nematode of potatoes (*Heterodera rostochiensis* Wr.), the flag smut disease (*Urocystis tritici* Koern.), and other injurious plant diseases and insect pests. Accordingly, to prevent the introduction into the United States of plant pests, the importation of those articles into the United States is prohibited unless they are imported in accordance with the regulations in this subpart or their importation has been authorized for experimental, therapeutic, or developmental purposes by a controlled import permit issued in accordance with § 319.6.

■ 4. Section 319.8–1 is amended as follows:

■ a. By removing the definition of *Deputy Administrator, Plant Protection and Quarantine Programs;*

■ b. By revising the definitions of *approved; approved areas of Mexico; authorized; north, northern; treatment;* and *utilization,* including removing footnote 1; and

■ c. By adding, in alphabetical order, a definition of *Administrator.*

The revisions and addition read as follows:

§ 319.8–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

Approved. Approved by the Administrator.

Approved areas of Mexico. Any areas of Mexico, other than Northwest Mexico and the west coast of Mexico, which are designated by the Administrator as areas in which cotton and cotton products are

produced and handled under conditions comparable to those under which like cotton and cotton products are produced and handled in the generally infested pink bollworm regulated area in the United States.

* * * * *

Authorized. Authorized by the Administrator.

* * * * *

North, northern. When used to designate ports of arrival, these terms mean the port of Norfolk, VA, and all Atlantic Coast ports north thereof, ports along the Canadian border, and Pacific Coast ports in the States of Washington and Oregon. When used in a geographic sense to designate areas or locations, these terms mean any State in which cotton is not grown commercially. However, when cotton is grown commercially in certain portions of a State, as is the case in Illinois, Kansas, and Missouri, these terms include those portions of such State as may be determined by the Administrator as remote from the main area of cotton production.

* * * * *

Treatment. Procedures administratively approved by the Administrator for destroying infestations or infections of insect pests or plant diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

* * * * *

Utilization. Processing or manufacture, in lieu of fumigation at time of entry, at a mill or plant authorized by APHIS through a compliance agreement for foreign cotton processing or manufacturing.

* * * * *

§§ 319.8–2, 319.8–8, 319.8–11, and 319.8–17 [Amended]

■ 5. Sections 319.8–2, 319.8–8, 319.8–11, and 319.8–17 are amended by redesignating footnotes 2 through 6 as footnotes 1 through 5, respectively.

§ 319.8–3 [Amended]

■ 6. In § 319.8–3, paragraphs (a) and (b) are amended by removing the word ''Deputy'' each time it appears.

§ 319.8–8 [Amended]

■ 7. In § 319.8–8, paragraphs (a)(2)(v) and (a)(4) are amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' each time they appear and adding the word ''Administrator'' in their place.

§ 319.8–12 [Amended]

■ 8. In § 319.8–12, paragraphs (d) and (f) are amended by removing the word ''Deputy'' each time it appears.

§§ 319.8–19 and 319.8–20 [Removed and Reserved]

■ 9. Sections 319.8–19 and 319.8–20 are removed and reserved.

■ 10. In § 319.15, paragraph (a) is revised to read as follows:

§ 319.15 Notice of quarantine.

(a) The importation into the United States of sugarcane and its related products, including cuttings, canes, leaves and bagasse, from all foreign countries and localities is prohibited, except for importations for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

■ 11. In § 319.19, paragraph (b) is revised to read as follows:

§ 319.19 Notice of quarantine.

* * * * *

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

■ 12. In § 319.24, paragraph (b) is amended by removing the second and third sentences and adding a new sentence in their place to read as follows:

§ 319.24 Notice of quarantine.

* * * * *

(b) * * * However, this prohibition does not apply to importations of such items for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

§ 319.24–1 [Amended]

■ 13. Section 319.24–1 is amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the words ''Administrator, Animal and Plant Health Inspection Service'' in their place.

■ 14. Section 319.28 is amended as follows:

■ a. By revising paragraph (d) to read as set forth below.

■ b. In paragraphs (i) and (j), by removing the word ''Deputy'' each time it occurs.

§ 319.28 Notice of quarantine.

* * * * *

(d) This prohibition shall not apply to importations for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

■ 15. Section 319.37–1 is amended by removing the definition of *Deputy Administrator* and by adding, in alphabetical order, definitions of *Administrator* and *controlled import permit* to read as follows:

§ 319.37–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.

* * * * *

■ 16. Section 319.37–2 is amended as follows:

■ a. By revising paragraph (c)(1) to read as set forth below.

■ b. In paragraphs (c)(3), (c)(4), and (c)(5), by removing the word ''Departmental'' each time it appears and adding the words ''controlled import'' in its place.

■ c. In paragraph (c)(4), by removing the word ''Deputy''.

§ 319.37–2 Prohibited articles.

* * * * *

(c) * * *

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6;

* * * * *

■ 17. Section 319.37–3 is amended by revising paragraph (d) and adding new paragraphs (g) and (h) to read as follows:

§ 319.37–3 Permits.

* * * * *

(d) Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the holder of the permit has not complied with any condition for the use of the document. The reasons for the withdrawal will be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit.

* * * * *

(g) Persons wishing to import restricted articles into the United States for experimental, therapeutic, or developmental purposes must apply for a controlled import permit in accordance with § 319.6.

(h) The importation of restricted articles required to be grown under the postentry quarantine provisions of § 319.37–7 must be authorized by a controlled import permit obtained in accordance with § 319.6.

* * * * *

§ 319.37–7 [Amended]

■ 18. Section 319.37–7 is amended as follows:

■ a. In paragraph (a)(2), in the second sentence, by removing the word ''written'' and adding the words ''controlled import'' in its place, and by removing the citation ''§ 319.37–3'' and adding the words ''§ 319.6'' in its place.

■ b. In paragraph (d) introductory text, in the first sentence, by removing the word ''written'' and adding the words ''controlled import'' in its place, and by removing the citation ''§ 319.37–3'' and adding the words ''§ 319.6'' in its place.

■ 19. Section 319.40–1 is amended by removing the definition of *departmental permit* and by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.40–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.

* * * * *

■ 20. Section 319.40–2 is amended as follows:

■ a. In the heading of paragraph (d), by removing the words ''scientific or educational'' and adding the words ''therapeutic, or developmental'' in their place.

■ b. By revising paragraph (d)(1) to read as set forth below.

■ c. In paragraphs (d)(2) and (d)(3), by removing the word ''Departmental'' each time it appears and adding the words ''controlled import'' in its place.

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

* * * * *

(d) * * *

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6;

* * * * *

■ 21. In § 319.41, paragraph (c) is revised to read as follows:

§ 319.41 Notice of quarantine.

* * * * *

(c) The Administrator may authorize the importation of articles otherwise prohibited under paragraph (b) of this section under conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

§ 319.41–3 [Amended]

■ 22. In § 319.41–3, paragraphs (a) and (b) are amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' each time they appear and adding the word ''Administrator'' in their place.

■ 23. In § 319.55, paragraph (c) is revised to read as follows:

§ 319.55 Notice of quarantine.

* * * * *

(c) The Administrator may authorize the importation of articles otherwise prohibited by this subpart under conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

■ 24. Section 319.59–1 is amended by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.59–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.

* * * * *

§ 319.59–2 [Amended]

■ 25. Section 319.59–2 is amended as follows:

■ a. In paragraph (b) introductory text, by removing the words ''by the U.S. Department of Agriculture for experimental or scientific purposes'' and adding the words ''for experimental, therapeutic, or developmental purposes under a controlled import permit issued in accordance with § 319.6'' in their place.

■ b. In paragraphs (b)(2), (b)(3), and (b)(4), by removing the word ''departmental'' each time it appears and adding the words ''controlled import'' in its place.

■ 26. Section 319.69 is amended as follows:

■ a. In paragraph (b) introductory text, by removing the words ''supplemental to this quarantine'' and adding the words ''in this subpart'' in their place.

■ b. By revising paragraph (c) to read as set forth below.

§ 319.69 Notice of quarantine.

* * * * *

(c) The importation of plants and plant products that are prohibited or restricted under paragraphs (a) and (b) of this section may be authorized for experimental, therapeutic, or developmental purposes under conditions specified in a controlled import permit issued in accordance with § 319.6.

* * * * *

■ 27. Section 319.74–1 is amended by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.74–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.

* * * * *

■ 28. Section 319.74–3 is revised to read as follows:

§ 319.74–3 Importations for experimental or similar purposes.

Cut flowers may be imported for experimental, therapeutic, or developmental purposes under conditions specified in a controlled import permit issued in accordance with § 319.6.

■ 29. In § 319.75, paragraph (c) is revised to read as follows:

§ 319.75 Restrictions on importation of restricted articles; disposal of articles refused importation.

* * * * *

(c) A restricted article may be imported without complying with other restrictions under this subpart if:

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6;

(2) Imported at the National Plant Germplasm Inspection Station, Building 580, Beltsville Agricultural Research Center East, Beltsville, MD 20705, or through any USDA plant inspection station listed in § 319.37–14; and

(3) Imported with a controlled import tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a controlled import permit number corresponding to the number of the controlled import permit issued for such article.

■ 30. Section 319.75–1 is amended as follows:

■ a. By removing the definition of *Deputy Administrator.*

■ b. In the definition of *inspector,* by removing the word ''Deputy''.

■ c. By adding, in alphabetical order, a definition of *Administrator* to read as set forth below.

§ 319.75–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

§ 319.75–3 [Amended]

■ 31. In § 319.75–3, paragraph (d) is amended by removing the word ''Deputy'' each time it appears.

§ 319.75–8 [Amended]

■ 32. Section 319.75–8 is amended by removing the word ''Deputy''.

Done in Washington, DC, this 26th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–10385 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0287]

RIN 1625–AA08

Special Local Regulation; Wy-Hi Rowing Regatta, Trenton Channel; Detroit River, Wyandotte, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Trenton Channel of the Detroit River, Wyandotte, Michigan. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Wy-Hi Rowing Regatta. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of the Trenton Channel. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

DATES: This rule is effective from 7:30 a.m. until 5 p.m. on May 4, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0287. To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run is impracticable. The final details of this year's regatta were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying this temporary rule to wait for a notice and comment period to run would be impracticable and it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this event.

Under 5 U.S.C. 553(d)(3), for the same reasons as discussed above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

On May 4, 2013, the Wyandotte Boat Club is holding a rowing race that will require the immediate area to be clear of all vessel traffic. The rowing race will occur between 7:30 a.m. and 5 p.m. on May 4, 2013. The Captain of the Port Detroit has determined that the likely combination of recreation vessels, commercial vessels, and large numbers of spectators in close proximity to rowing regatta pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation, pursuant to the authority in 33 U.S.C. 1233, around the race's course will help ensure the safety of life during this event.

C. Discussion of Rule

In light of the aforesaid hazards, the Captain of the Port Detroit has

determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass all waters of the Detroit River, Trenton Channel starting at a point on land at position 42°10′58″ N, 083°9′23″ W; following the Trenton Channel north to position 42°11′44″ N, 083°8′56″ W; and will be enforced on May 4, 2013, from 7:30 a.m. until 5 p.m. All geographic coordinates are North American Datum of 1983 (NAD 83).

Two thirds of the Trenton Channel on the western portion of the regulated area, from the Wyandotte shoreline to a point approximately 670 feet east into the channel, will be designated as the race zone, while the remaining third portion on the eastern side of the of the regulated area, approximately 330 feet in width, will be designated as a buffer zone.

Entry into, transiting, or anchoring within the race zone of the regulated area is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. Entry into and transiting within buffer zone of the regulated area is only authorized at no-wake speed and requires the authorization of the Captain of the Port or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. 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 Coast Guard's use of this special local regulation will be of relatively small size and short duration, and it is designed to minimize the impact on navigation. Moreover, vessels may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulation. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

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 will 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 in this portion of the Trenton Channel near Wyandotte, MI between 7:30 a.m. until 5 p.m. on May 4, 2013.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect and enforced for nine and a half hours on one day. The race event will be temporarily stopped for any deep draft vessels transiting through the shipping lanes. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

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 will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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 will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade, and, therefore it is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. During the annual permitting process for this event an environmental analysis was conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this rulemaking action.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T09–0287 to read as follows:

§ 100.T09–0287 Special Local Regulation; Wy-Hi Rowing Regatta, Wyandotte, MI.

(a) *Regulated area.* A regulated area is established to include all waters of the Trenton Channel in the Detroit River, Wyandotte, Michigan, starting at a point on land at position 42°10′58″ N, 083°9′23″ W; following the Trenton Channel north to position 42°11′44″ N, 083°8′56″ W. All geographic coordinates are North American Datum of 1983 (NAD 83). Two thirds of the Trenton Channel on the western portion of the regulated area, from the Wyandotte shoreline to a point approximately 670 feet east into the channel, will be designated as the race zone, while the remaining third portion on the eastern side of the of the regulated area, approximately 330 feet in width, will be designated as a buffer zone.

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 7:30 a.m. until 5 p.m. on May 4, 2013.

(c) *Regulations.* (1) No vessel may enter, transit through, or anchor within the race zone of the regulated area unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) Vessels may enter and transit through the buffer zone on the eastern side of regulated area at no-wake speed with the authorization of the Captain of the Port or his designated on scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port, Sector Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the security zones must comply with all directions given to them by the Captain of the Port, Sector Detroit, or his on-scene representative.

Dated: April 18, 2013.

J.E. Ogden,

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

[FR Doc. 2013–10319 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0071]

RIN 1625–AA08

Special Local Regulations; Third Annual Space Coast Super Boat Grand Prix, Atlantic Ocean; Cocoa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of the Atlantic Ocean east of Cocoa Beach, Florida during the Space Coast Super Boat Grand Prix, a series of high-speed boat races. The event is scheduled to take place on Saturday and Sunday, May 18–19, 2013, and approximately 30 high-speed race boats are anticipated to participate in the races, and approximately 200 spectator vessels are expected to attend the event. This special local regulation is necessary to provide for the safety of life on navigable waters of the United States during the races.

DATES: This rule is effective from 9 a.m. on May 18, 2013, until 5:30 p.m. on May 19, 2013. This rule will be enforced from 9 a.m. until 5:30 p.m. daily on May 18, 2013, and May 19, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0071. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''Keyword'' box, and then click ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone

(904) 564–7563, email *Robert.S.Butts@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this 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 it is impracticable to do so. The Coast Guard did not receive information regarding this race with sufficient time to administratively process both an NPRM and a final rule.

Under 5 U.S.C. 553(d)(3), for the reasons stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive the information for this event until it was too late to allow for a 30-day delayed effective date. Additionally, this event involves approximately 30 participant vessels and 200 spectator vessels. Due to the inherent dangers involved with a high-speed race and the number of vessels involved, it is in the best interest of the public to have a regulation in place and to not delay its effective date.

B. Basis and Purpose

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

On Saturday and Sunday, May 18–19, 2013, Super Boat International Productions, Inc. will host the Space Coast Super Boat Grand Prix, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean east of Cocoa Beach, Florida. Approximately 30 high-speed power boats are anticipated to participate in the races. It is anticipated that at least 200 spectator vessels will be present during the event.

The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Space Coast Super Boat Grand Prix.

C. Discussion of the Final Rule

The special local regulation will encompass certain waters of the Atlantic Ocean east of Cocoa Beach, Florida. The special local regulation will be enforced from 9 a.m. until 5:30 p.m., May 18–19, 2013. The special local regulation will consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 17 hours over the course of two days; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the special local regulation from 9 a.m. until 5:30 p.m. on May 18–19, 2013.

For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State, 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 have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0071 to read as follows:

§ 100.35T07–0071 Special Local Regulations; Space Coast Super Boat Grand Prix, Atlantic Ocean; Cocoa Beach, FL.

(a) *Regulated areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race area.* All waters of the Atlantic Ocean located east of Cocoa Beach encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°22′10″ N, 80°35′51″ W; thence east to Point 2 in position 28°22′10″ N, 80°35′47″ W; thence south to Point 3 in position 28°19′54″ N, 80°36′02″ W; thence west to Point 4 in position 28°19′54″ N, 80°36′08″ W; thence north back to origin. Only authorized race participants may enter the race area.

(2) *Buffer zone.* All waters of the Atlantic Ocean located east of Cocoa Beach, excluding the race area, and encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°22′16″ N, 80°36′04″ W; thence east to Point 2 in position 28°22′15″ N, 80°35′39″ W; thence south to Point 3 in position 28°19′47″ N, 80°35′55″ W; thence west to Point 4 in position 28°19′47″ N, 80°36′22″ W; thence north back to origin. Only vessels enforcing the buffer zone and authorized race participants transiting to the race area may enter the buffer zone.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local

officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within Race Area unless an authorized race participant.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within Buffer Zone except for those vessels enforcing the buffer zone or authorized race participants transiting to the race area.

(3) Vessels that are neither participating in the race or enforcing the buffer zone are prohibited from entering the regulated areas unless authorized by the Captain of the Port Jacksonville or a designated representative.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(5) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement date.* This rule will be enforced from 9 a.m. until 5:30 p.m. on May 18–19, 2013.

Dated: April 18, 2013.

T.G. Allan, Jr.,

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

[FR Doc. 2013–10226 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0258]

RIN 1625–AA00

Safety Zone, Figure Eight Causeway Channel; Figure Eight Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Figure Eight Causeway Channel, Figure Eight Island, NC in support of the fireworks display for a private wedding. This action is necessary to protect the life and property of the maritime public and spectators from the hazards posed by aerial fireworks displays. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

DATES: This rule will be effective from 8 p.m. until 11 p.m. on May 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0258]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone (252) 247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not provided to the Coast Guard until April 10, 2013. As such, it is impracticable to provide a full comment period due to lack of time.

Under 5 U.S.C. 553(d)(3), for the same reasons as discussed above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date for comment would impracticable and contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft, and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected waterways of the safety zone via marine information broadcasts, local notice to mariners, commercial radio stations, and area newspapers.

B. Basis and Purpose

On May 31, 2013, East Coast Pyrotechnics will provide a fireworks display in support of a private wedding over the waters of the Figure Eight Causeway Channel. The fireworks will be launched from the southern shore of Figure Eight Causeway Channel. The fireworks debris fallout area will extend over the navigable waters of Figure Eight Causeway Channel. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, including accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted from transiting within fireworks launch and fallout area.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone on the navigable waters of Figure Eight Island Channel in Figure Eight Island, NC. The regulated area of this safety zone includes all water of the Figure Eight Island Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.

This safety zone will be effective from 8 p.m. to 11 p.m. on May 31, 2013. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard

Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts access to Figure Eight Causeway Channel, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the Figure Eight Causeway Channel where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event that has been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit through the regulated area at various times, and, with the permission of the Patrol Commander. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have 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 establishing a safety zone for a fireworks display launch site and fallout area and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. This rule is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. 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 recordkeeping requirements, Security measures, and 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0258 to read as follows:

§ 165.T05–0258 Safety Zone, Figure Eight Causeway Channel; Figure Eight Island, NC

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: specified waters of the Captain of the Port, Sector North Carolina, as defined in 33 CFR 3.25–20, all water of the Figure Eight Island Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced on May 31, 2013 from 8 p.m. to 11 p.m. unless cancelled earlier by the Captain of the Port.

Dated: April 12, 2013.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Sector North Carolina.

[FR Doc. 2013–10321 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2009–0961; FRL–9806–9]

Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final rule. In the ''Proposed Rules'' section of today's **Federal Register**, EPA is also publishing a separate notice that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Georgia's changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a notice in the **Federal Register** withdrawing today's immediate final rule before it takes effect, and the separate notice published in today's ''Proposed Rules'' section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This final authorization will become effective on July 1, 2013 unless EPA receives adverse written comment by June 3, 2013. If EPA receives such comment, EPA will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2009–0961, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: gleaton.gwen@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Instructions: EPA must receive your comments by June 3, 2013. Please refer to Docket Number EPA–R04–RCRA–2009–0961. Do not submit information that you consider to be confidential business information 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 publicly 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.

You may view and copy Georgia's applications and associated publicly available materials from 8:00 a.m. to 4:00 p.m. at the following locations: EPA, Region 4, RCRA Division, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; and the Georgia Department of Natural Resources, Environmental Protection Division, 2 Martin Luther King, Jr. Drive, Suite 1154 East Tower, Atlanta, Georgia 30334–4910; telephone number: (404) 656–2833. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; fax number: (404) 562–9964; email address: g*leaton.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in unauthorized States. Thus, EPA will implement those requirements and prohibitions in Georgia, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On January 8, 2007, and August 14, 2008, Georgia submitted final complete program revision applications, seeking authorization of changes to its hazardous waste program. EPA concludes that Georgia's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Georgia final authorization to operate its hazardous waste program with the changes described in the authorization applications, and as outlined below in Section G of this notice.

Georgia has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

The effect of this decision is that the changes described in Georgia's authorization applications will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. Georgia will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the State regulations for which Georgia is being authorized by today's action are already effective and enforceable requirements under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

Along with this immediate final rule, EPA is publishing a separate notice in the ''Proposed Rules'' section of today's **Federal Register** that serves as the proposal to authorize these State program changes. EPA did not publish a proposed rule before today because EPA views this as a routine program change and does not expect comments that oppose this approval. EPA is providing an opportunity for public comment now, as described in Section E of this notice.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, EPA will withdraw today's immediate final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposed rule mentioned in the previous section, after considering all comments received during the comment period, and will address all such comments in a later final rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, EPA will withdraw that part of today's immediate final rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Georgia previously been authorized for?

Georgia initially received final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement a hazardous waste management program. EPA granted authorization for changes to Georgia's program on the following dates: July 7, 1986, effective September 18, 1986 (51 FR 24549); July 28, 1988, effective September 26, 1988 (53 FR 28383); July 24, 1990, effective September 24, 1990 (55 FR 30000); February 12, 1991, effective April 15, 1991 (56 FR 5656); May 11, 1992, effective July 10, 1992 (57 FR 20055); November 25, 1992, effective January 25, 1993 (57 FR 55466); February 26, 1993, effective April 27, 1993 (58 FR 11539); November 16, 1993,

effective January 18, 1994 (58 FR 60388); April 26, 1994, effective June 27, 1994 (59 FR 21664); May 10, 1995, effective July 10, 1995 (60 FR 24790); August 30, 1995, effective October 30, 1995 (60 FR 45069); March 7, 1996, effective May 6, 1996 (61 FR 9108); September 18, 1998, effective November 17, 1998 (63 FR 49852); October 14, 1999, effective December 13, 1999 (64 FR 55629); November 28, 2000, effective March 30, 2001 (66 FR 8090); July 16, 2002, effective September 16, 2002 (67 FR 46600); November 19, 2002, effective January 21, 2003 (67 FR 69690); July 18, 2003, effective September 16, 2003 (68 FR 42605); January 27, 2005, effective April 20, 2005 (70 FR 12973); and April 25, 2006, effective June 26, 2006 (71 FR 23864).

G. What changes is EPA authorizing with this action?

On January 8, 2007, and August 14, 2008, Georgia submitted final complete program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Georgia final authorization for the following program changes:

Description of Federal requirement	Federal Register date and page	Analogous State Authority [1]
207—Uniform Hazardous Waste Manifest Rule	70 FR 10776 03/04/05 ..... 70 FR 35034 06/16/05.	391–3–11–.02(1); 391–3–11–.07(1); 391–3–11–.08(1); 391–3–11–.09; and 391–3–11–.10(1) and (2).
208—Methods and Innovation Rule and SW–846 Final Update IIIB.	70 FR 34538 06/14/05 ..... 70 FR 44150 08/01/05.	391–3–11–.02(1); 391–3–11–.07(1) and (2); 391–3–11–.10(1), (2) and (3); 391–3–11–.11(3)(h); 391–3–11–.11(10); 391–3–11–.16; and 391–3–11–.17.
209—Universal Waste Rule; Specific Provisions for Mercury Containing Equipment.	70 FR 45508 08/05/05	391–3–11–.02(1); 391–3–11–.07(1); 391–3–11–.10(1) and (2); 391–3–11–.16; and 391–3–11–.18.
211—Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks exemptions").	70 FR 57769 10/04/05	391–3–11–.07(1).
212—NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II).	70 FR 59402 10/12/05	391–3–11–.02(1); 391–3–11–.10(1), (2) and (3); 391–3–11–.11(3)(c) and (h); 391–3–11–.11(5)(c); 391–3–11–.11(7)(d); and 391–3–11–.11(10) and (13).
No Checklist—Identification and Listing of Hazardous Waste (CFR Correction).	70 FR 60217 10/17/05	391–3–11–.07(1).
214—Corrections to Errors in the Code of Federal Regulations	71 FR 40254 07/14/06	391–3–11–.02(1); 391–3–11–.05(1); 391–3–11–.07(1) and (2); 391–3–11–.08(1); 391–3–11–.10(1), (2) and (3); 391–3–11–.11(1)(a); 391–3–11–.11(3)(c), (d), (f), (g) and (h); 391–3–11–.11(5)(d); 391–3–11–.11(7)(c) and (d); 391–3–11–.11(11) and (12); 391–3–11–.16; 391–3–11–.17; and 391–3–11–.18.
215—Cathode Ray Tubes Rule	71 FR 42928 07/28/06	391–3–11–.02(1) and 391–3–11–.07(1).
No Checklist—Standards for Universal Waste Management (CFR Correction).	72 FR 35666 06/29/07	391–3–11–.18.

[1] The Georgia provisions analogous to the Uniform Hazardous Waste Manifest Rule and the Universal Waste Rule were effective March 13, 2006. The Georgia provisions analogous to the remaining Federal requirements were effective June 23, 2008.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

While Georgia has adopted the necessary regulations to receive authorization for the Uniform Hazardous Waste Manifest Rule set forth in 70 FR 10776, March 4, 2005, EPA cannot delegate the Federal manifest registry functions or the export or import provisions contained in such rule. As a result, EPA will continue to implement these requirements. Similarly, EPA cannot delegate the Federal requirements at 40 CFR 261.39(a)(5), 261.40 and 261.41 contained in the Cathode Ray Tubes Rule set forth in 71 FR 42928, July 28, 2006. While Georgia has properly adopted these requirements by reference at Georgia Hazardous Waste Management Rule 391–3–11–.07(1), EPA will continue to implement these requirements.

I. Who handles permits after the authorization takes effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not authorized.

J. What is codification and is EPA codifying Georgia's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Georgia's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart L, for the authorization of Georgia's program changes at a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866

(58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective July 1, 2013, unless objections to this authorization are received.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 28, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–10408 Filed 5–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8279]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm*.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective

enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Berlin, Township of, Wayne County	422158	January 23, 1976, Emerg; July 15, 1988, Reg; May 16, 2013, Susp.	May 16, 2013 ...	May 16, 2013
Bethany, Borough of, Wayne County	422566	October 31, 1975, Emerg; November 6, 1981, Reg; May 16, 2013, Susp.	.....do	Do.
Buckingham, Township of, Wayne County.	422159	May 12, 1975, Emerg; August 19, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Canaan, Township of, Wayne County ..	422160	August 28, 1975, Emerg; September 30, 1987, Reg; May 16, 2013, Susp.	.....do	Do.
Cherry Ridge, Township of, Wayne County.	422161	November 14, 1975, Emerg; December 4, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Clinton, Township of, Wayne County	422162	November 13, 1975, Emerg; February 4, 1983, Reg; May 16, 2013, Susp.	.....do	Do.
Damascus, Township of, Wayne County.	422163	June 9, 1975, Emerg; September 30, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Dreher, Township of, Wayne County	422164	May 14, 1975, Emerg; March 4, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Dyberry, Township of, Wayne County ..	422165	May 2, 1975, Emerg; September 30, 1987, Reg; May 16, 2013, Susp.	.....do	Do.
Hawley, Borough of, Wayne County	420863	July 18, 1974, Emerg; August 19, 1991, Reg; May 16, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Honesdale, Borough of, Wayne County	420864	April 18, 1973, Emerg; November 30, 1973, Reg; May 16, 2013, Susp.	.....do	Do.
Lake, Township of, Wayne County	422166	September 17, 1975, Emerg; October 15, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Lebanon, Township of, Wayne County	422567	January 18, 1980, Emerg; August 19, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Lehigh, Township of, Wayne County	422167	July 2, 1975, Emerg; March 4, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Manchester, Township of, Wayne County.	422168	December 8, 1975, Emerg; September 30, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Mount Pleasant, Township of, Wayne County.	422169	July 2, 1975, Emerg; December 4, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Oregon, Township of, Wayne County ...	422170	December 2, 1975, Emerg; November 5, 1982, Reg; May 16, 2013, Susp.	.....do	Do.
Palmyra, Township of, Wayne County ..	420865	April 18, 1973, Emerg; March 15, 1977, Reg; May 16, 2013, Susp.	.....do	Do.
Paupack, Township of, Wayne County	421023	December 10, 1973, Emerg; March 1, 1977, Reg; May 16, 2013, Susp.	.....do	Do.
Preston, Township of, Wayne County ...	422171	May 12, 1975, Emerg; October 15, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Prompton, Borough of, Wayne County	420866	June 25, 1975, Emerg; June 1, 1989, Reg; May 16, 2013, Susp.	.....do	Do.
Salem, Township of, Wayne County	422172	September 30, 1975, Emerg; July 15, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Scott, Township of, Wayne County	422173	January 27, 1976, Emerg; December 4, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
South Canaan, Township of, Wayne County.	422174	July 29, 1975, Emerg; August 19, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Starrucca, Borough of, Wayne County	420867	November 26, 1975, Emerg; February 17, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Sterling, Township of, Wayne County ...	422175	May 13, 1975, Emerg; December 3, 1982, Reg; May 16, 2013, Susp.	.....do	Do.
Texas, Township of, Wayne County	422176	July 24, 1975, Emerg; September 30, 1987, Reg; May 16, 2013, Susp.	.....do	Do.
Waymart, Borough of, Wayne County ..	420868	July 23, 1975, Emerg; October 30, 1981, Reg; May 16, 2013, Susp.	.....do	Do.
West Virginia:				
Boone County, Unincorporated Areas ..	540007	April 25, 1975, Emerg; April 16, 1991, Reg; May 16, 2013, Susp.	.....do	Do.
Region IV				
Georgia:				
Atlanta, City of, DeKalb and Fulton Counties.	135157	April 30, 1970, Emerg; October 14, 1971, Reg; May 16, 2013, Susp.	.....do	Do.
Dunwoody, City of, DeKalb County	130679	N/A, Emerg; October 14, 2009, Reg; May 16, 2013, Susp.	.....do	Do.
Kentucky:				
Augusta, City of, Bracken County	210022	February 26, 1975, Emerg; September 16, 1988, Reg; May 16, 2013, Susp.	.....do	Do.
Bracken County, Unincorporated Areas	210021	June 9, 1997, Emerg; November 1, 1997, Reg; May 16, 2013, Susp.	.....do	Do.
Bromley, City of, Kenton County	210253	September 19, 1974, Emerg; April 15, 1980, Reg; May 16, 2013, Susp.	.....do	Do.
Covington, City of, Kenton County	210129	March 19, 1974, Emerg; June 15, 1979, Reg; May 16, 2013, Susp.	.....do	Do.
Crescent Springs, City of, Kenton County.	210450	N/A, Emerg; April 20, 2011, Reg; May 16, 2013, Susp.	.....do	Do.
Crestview Hills, City of, Kenton County	210451	N/A, Emerg; June 11, 2009, Reg; May 16, 2013, Susp.	.....do	Do.
Edgewood, City of, Kenton County	210452	N/A, Emerg; November 22, 2010, Reg; May 16, 2013, Susp.	.....do	Do.
Erlanger, City of, Kenton County	210378	November 20, 1997, Emerg; March 16, 2009, Reg; May 16, 2013, Susp.	.....do	Do.
Fort Wright, City of, Kenton County	210249	October 21, 1980, Emerg; October 21, 1980, Reg; May 16, 2013, Susp.	.....do	Do.
Independence, City of, Kenton County	210240	October 10, 1974, Emerg; September 17, 1980, Reg; May 16, 2013, Susp.	.....do	Do.
Kenton County, Unincorporated Areas	210128	December 26, 1974, Emerg; July 2, 1981, Reg; May 16, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Ludlow, City of, Kenton County	210266	October 29, 1974, Emerg; September 28, 1979, Reg; May 16, 2013, Susp.	.....do	Do.
Ryland Heights, City of, Kenton County	210389	N/A, Emerg; September 18, 2001, Reg; May 16, 2013, Susp.	.....do	Do.
Taylor Mill, City of, Kenton County	210246	September 13, 1974, Emerg; September 28, 1979, Reg; May 16, 2013, Susp.	.....do	Do.
Villa Hills, City of, Kenton County	210456	N/A, Emerg; May 22, 2009, Reg; May 16, 2013, Susp.	.....do	Do.
Mississippi:				
Lauderdale County, Unincorporated Areas.	280224	May 28, 1975, Emerg; September 29, 1989, Reg; May 16, 2013, Susp.	.....do	Do.
Meridian, City of, Lauderdale County	280096	November 19, 1971, Emerg; December 15, 1977, Reg; May 16, 2013, Susp.	.....do	Do.
Region V				
Michigan:				
Allendale, Charter Township of, Ottawa County.	260490	December 30, 1977, Emerg; July 5, 1982, Reg; May 16, 2013, Susp.	.....do	Do.
Georgetown, Charter Township of, Ottawa County.	260589	December 16, 1975, Emerg; July 18, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Tallmadge, Charter Township of, Ottawa County.	260494	September 3, 1980, Emerg; March 2, 1983, Reg; May 16, 2013, Susp.	.....do	Do.
Wisconsin:				
Oneida County, Unincorporated Areas	550579	June 10, 1975, Emerg; August 5, 1991, Reg; May 16, 2013, Susp.	.....do	Do.
Rhinelander, City of, Oneida County	550301	March 25, 1975, Emerg; August 5, 1991, Reg; May 16, 2013, Susp.	.....do	Do.
Region VI				
Arkansas:				
Greene County, Unincorporated Areas	050435	N/A, Emerg; July 20, 2011, Reg; May 16, 2013, Susp.	.....do	Do.
Oak Grove Heights, City of, Greene County.	050510	N/A, Emerg; July 27, 2011, Reg; May 16, 2013, Susp.	.....do	Do.
New Mexico:				
Clovis, City of, Curry County	350010	May 1, 1974, Emerg; February 4, 1981, Reg; May 16, 2013, Susp.	.....do	Do.
Curry County, Unincorporated Areas	350127	February 11, 2005, Emerg; August 5, 2010, Reg; May 16, 2013, Susp.	.....do	Do.
Region VIII				
Colorado:				
Crested Butte, Town of, Gunnison County.	080079	June 13, 1974, Emerg; September 4, 1985, Reg; May 16, 2013, Susp.	.....do	Do.
Gunnison, City of, Gunnison County	080080	June 18, 1975, Emerg; April 18, 1983, Reg; May 16, 2013, Susp.	.....do	Do.
Gunnison County, Unincorporated Areas.	080078	May 28, 1975, Emerg; September 29, 1989, Reg; May 16, 2013, Susp.	.....do	Do.
Marble, Town of, Gunnison County	080197	January 16, 1976, Emerg; October 1, 1990, Reg; May 16, 2013, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: March 27, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–10348 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8283]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has

adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Albion, Town of, Oswego County	361577	December 15, 1975, Emerg; April 15, 1986, Reg; June 18, 2013, Susp.	June 18, 2013	June 18, 2013
Altmar, Village of, Oswego County	360646	January 12, 1976, Emerg; February 5, 1986, Reg; June 18, 2013, Susp.	*.....do	Do.
Amboy, Town of, Oswego County	361260	September 6, 1985, Emerg; March 1, 1988, Reg; June 18, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Central Square, Village of, Oswego County.	360647	July 7, 1975, Emerg; November 20, 1985, Reg; June 18, 2013, Susp.	.....do	Do.
Cleveland, Village of, Oswego County ..	360998	January 13, 1976, Emerg; June 1, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Constantia, Town of, Oswego County ..	360648	June 26, 1975, Emerg; November 3, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Fulton, City of, Oswego County	360649	November 20, 1974, Emerg; April 15, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Granby, Town of, Oswego County	360650	June 30, 1975, Emerg; September 16, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Hannibal, Town of, Oswego County	360651	September 6, 1985, Emerg; February 1, 1988, Reg; June 18, 2013, Susp.	.....do	Do.
Hannibal, Village of, Oswego County ...	360652	October 29, 1974, Emerg; April 1, 1987, Reg; June 18, 2013, Susp.	.....do	Do.
Hastings, Town of, Oswego County	360653	March 10, 1975, Emerg; January 19, 1983, Reg; June 18, 2013, Susp.	.....do	Do.
Lacona, Village of, Oswego County	361350	November 25, 1977, Emerg; May 11, 1979, Reg; June 18, 2013, Susp.	.....do	Do.
Mexico, Town of, Oswego County	360654	June 30, 1976, Emerg; October 15, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Mexico, Village of, Oswego County	361460	July 30, 1975, Emerg; October 15, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Minetto, Town of, Oswego County	361261	October 24, 1975, Emerg; September 30, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
New Haven, Town of, Oswego County	360655	December 23, 1975, Emerg; February 17, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Oswego, City of, Oswego County	360656	April 30, 1973, Emerg; May 16, 1977, Reg; June 18, 2013, Susp.	.....do	Do.
Oswego, Town of, Oswego County	360657	December 16, 1976, Emerg; September 30, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Parish, Town of, Oswego County	361546	December 9, 1976, Emerg; April 15, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Parish, Village of, Oswego County	361575	November 18, 1975, Emerg; February 19, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Phoenix, Village of, Oswego County	360658	March 10, 1975, Emerg; February 17, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Pulaski, Village of, Oswego County	360659	June 2, 1975, Emerg; September 2, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Redfield, Town of Oswego County	361265	September 17, 1985, Emerg; April 1, 1991, Reg; June 18, 2013, Susp.	.....do	Do.
Richland, Town of, Oswego County	360660	March 21, 1974, Emerg; February 15, 1978, Reg; June 18, 2013, Susp.	.....do	Do.
Sandy Creek, Town of, Oswego County	360661	August 18, 1975, Emerg; October 15, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Sandy Creek, Village of, Oswego County.	361358	May 31, 1977, Emerg; May 11, 1979, Reg; June 18, 2013, Susp.	.....do	Do.
Schroeppel, Town of, Oswego County	360662	June 13, 1975, Emerg; August 2, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Scriba, Town of, Oswego County	360663	September 15, 1975, Emerg; September 16, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Volney, Town of, Oswego County	361266	November 20, 1975, Emerg; April 15, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
West Monroe, Town of, Oswego County.	360664	October 3, 1975, Emerg; January 20, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Region IV				
Florida:				
Blountstown, City of, Calhoun County ..	120060	March 17, 1975, Emerg; May 1, 1980, Reg; June 18, 2013, Susp.	.....do	Do.
Calhoun County, Unincorporated Areas	120403	May 14, 1975, Emerg; June 18, 1987, Reg; June 18, 2013, Susp.	.....do	Do.
Kissimmee, City of, Osceola County	120190	December 13, 1974, Emerg; July 2, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Liberty County, Unincorporated Areas ..	120148	May 19, 1978, Emerg; July 16, 1991, Reg; June 18, 2013, Susp.	.....do	Do.
Osceola County, Unincorporated Areas	120189	September 4, 1975, Emerg; February 3, 1982, Reg; June 18, 2013, Susp.	.....do	Do.
Saint Cloud, City of, Osceola County ...	120191	April 23, 1975, Emerg; September 17, 1980, Reg; June 18, 2013, Susp.	.....do	Do.
Kentucky:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Butler, City of, Pendleton County	210188	May 3, 1974, Emerg; April 30, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Falmouth, City of, Pendleton County	210189	November 5, 1975, Emerg; July 3, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Frankfort, City of, Franklin County	210075	April 23, 1974, Emerg; July 2, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Franklin County, Unincorporated Areas	210280	January 23, 1976, Emerg; September 30, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Pendleton County, Unincorporated Areas.	210297	May 1, 1997, Emerg; August 1, 1999, Reg; June 18, 2013, Susp.	.....do	Do.
North Carolina:				
Edgecombe County, Unincorporated Areas.	370087	August 6, 1975, Emerg; August 3, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Enfield, Town of, Halifax County	370115	August 7, 1975, Emerg; June 25, 1976, Reg; June 18, 2013, Susp.	.....do	Do.
Halifax County, Unincorporated Areas	370327	November 22, 1976, Emerg; May 5, 1981, Reg; June 18, 2013, Susp.	.....do	Do.
Nash County, Unincorporated Areas	370278	January 10, 1974, Emerg; June 1, 1978, Reg; June 18, 2013, Susp.	.....do	Do.
Nashville, Town of, Nash County	370167	July 2, 1975, Emerg; January 17, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Red Oak, Town of, Nash County	370516	N/A, Emerg; January 22, 1999, Reg; June 18, 2013, Susp.	.....do	Do.
Rocky Mount, City of, Edgecombe and Nash Counties.	370092	January 17, 1974, Emerg; May 1, 1978, Reg; June 18, 2013, Susp.	.....do	Do.
Sharpsburg, Town of, Edgecombe County.	370441	December 18, 1984, Emerg; July 3, 1990, Reg; June 18, 2013, Susp.	.....do	Do.
Whitakers, Town of, Edgecombe County.	370095	August 6, 1975, Emerg; April 15, 1980, Reg; June 18, 2013, Susp.	.....do	Do.
Region V				
Wisconsin:				
Berlin, City of, Green Lake and Waushara Counties.	550166	September 26, 1973, Emerg; September 30, 1977, Reg; June 18, 2013, Susp.	.....do	Do.
Waushara County, Unincorporated Areas.	550540	May 19, 1986, Emerg; November 2, 1991, Reg; June 18, 2013, Susp.	.....do	Do.
Wautoma, City of, Waushara County	550506	August 20, 1975, Emerg; N/A, Reg; June 18, 2013, Susp.	.....do	Do.
Wild Rose, Village of, Waushara County.	550507	January 22, 1982, Emerg; September 30, 1988, Reg; June 18, 2013, Susp.	.....do	Do.
Region VIII				
Montana:				
Flathead County, Unincorporated Areas	300023	October 31, 1975, Emerg; September 5, 1984, Reg; June 18, 2013, Susp.	.....do	Do.
Kalispell, City of, Flathead County	300025	July 27, 1976, Emerg; September 17, 1980, Reg; June 18, 2013, Susp.	.....do	Do.
South Dakota:				
McCook County, Unincorporated Areas	460280	June 2, 1989, Emerg; June 8, 1998, Reg; June 18, 2013, Susp.	.....do	Do.
Montrose, City of, McCook County	460052	December 16, 1975, Emerg; August 5, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Salem, City of, McCook County	460053	August 7, 1978, Emerg; May 1, 1986, Reg; June 18, 2013, Susp.	.....do	Do.
Region IX				
Nevada:				
Reno, City of, Washoe County	320020	April 25, 1975, Emerg; January 5, 1984, Reg; June 18, 2013, Susp.	.....do	Do.
Washoe County, Unincorporated Areas	320019	June 25, 1975, Emerg; August 1, 1984, Reg; June 18, 2013, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp. —Suspension.

Dated: April 19, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–10350 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8281]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Florida:				
Atlantic Beach, City of, Duval County	120075	November 19, 1971, Emerg; March 15, 1977, Reg; June 3, 2013, Susp.	June 3, 2013	June 3, 2013
Jacksonville, City of, Duval County	120077	November 19, 1971, Emerg; December 1, 1977, Reg; June 3, 2013, Susp.	do*	Do.
Jacksonville Beach, City of, Duval County	120078	November 19, 1971, Emerg; March 15, 1977, Reg; June 3, 2013, Susp.	do	Do.
Neptune Beach, City of, Duval County	120079	November 19, 1971, Emerg; March 15, 1977, Reg; June 3, 2013, Susp.	do	Do.
Region VI				
Texas:				
Bardwell, City of, Ellis County	481087	March 30, 1990, Emerg; March 1, 1991, Reg; June 3, 2013, Susp.	do	Do.
Cedar Hill, City of, Dallas and Ellis Counties	480168	June 21, 1974, Emerg; April 1, 1981, Reg; June 3, 2013, Susp.	do	Do.
Ellis County, Unincorporated Areas	480798	January 29, 1979, Emerg; August 19, 1987, Reg; June 3, 2013, Susp.	do	Do.
Ennis, City of, Ellis County	480207	February 13, 1978, Emerg; June 15, 1982, Reg; June 3, 2013, Susp.	do	Do.
Ferris, City of, Dallas and Ellis Counties	481076	July 5, 1974, Emerg; August 22, 1978, Reg; June 3, 2013, Susp.	do	Do.
Glenn Heights, City of, Dallas and Ellis Counties.	481265	July 8, 1980, Emerg; July 16, 1980, Reg; June 3, 2013, Susp.	do	Do.
Grand Prairie, City of, Dallas, Ellis and Tarrant Counties.	485472	October 1, 1971, Emerg; July 6, 1973, Reg; June 3, 2013, Susp.	do	Do.
Midlothian, City of, Ellis County	480801	June 11, 1981, Emerg; September 4, 1985, Reg; June 3, 2013, Susp.	do	Do.
Oak Leaf, City of, Ellis County	481672	N/A, Emerg; September 15, 2000, Reg; June 3, 2013, Susp.	do	Do.
Ovilla, City of, Dallas and Ellis Counties	481155	August 5, 1975, Emerg; April 15, 1980, Reg; June 3, 2013, Susp.	do	Do.
Palmer, City of, Ellis County	480209	June 15, 1987, Emerg; June 1, 1990, Reg; June 3, 2013, Susp.	do	Do.
Pecan Hill, City of, Ellis County	481673	N/A, Emerg; November 5, 2007, Reg; June 3, 2013, Susp.	do	Do.
Red Oak, City of, Ellis County	481650	May 24, 1993, Emerg; January 20, 1999, Reg; June 3, 2013, Susp.	do	Do.
Waxahachie, City of, Ellis County	480211	June 20, 1975, Emerg; August 1, 1980, Reg; June 3, 2013, Susp.	do	Do.
Region VIII				
South Dakota:				
Box Elder, City of, Pennington County	460089	June 7, 1974, Emerg; May 15, 1980, Reg; June 3, 2013, Susp.	do	Do.
Hill City, City of, Pennington County	460116	July 9, 1976, Emerg; November 18, 1981, Reg; June 3, 2013, Susp.	do	Do.
Keystone, Town of, Pennington County	460231	July 26, 1974, Emerg; March 4, 1980, Reg; June 3, 2013, Susp.	do	Do.
New Underwood, City of, Pennington County.	460092	August 18, 1975, Emerg; May 15, 1980, Reg; June 3, 2013, Susp.	do	Do.
Pennington County, Unincorporated Areas	460064	May 28, 1974, Emerg; December 1, 1981, Reg; June 3, 2013, Susp.	do	Do.
Rapid City, City of, Pennington County	465420	April 2, 1971, Emerg; September 14, 1973, Reg; June 3, 2013, Susp.	do	Do.

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: April 12, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–10349 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–12–P

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 800

RIN 3206–AM47

Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges; Correction

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date that appeared in the final rule published in the **Federal Register** on March 11, 2013, entitled ''Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges.''

DATES: Effective on May 2, 2013, the effective date of the final rule published March 11, 2013 (78 FR 15560) and the final rule correction published March 26, 2013 (78 FR 18246) is corrected to May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Julia Elam by telephone at (202) 606–2128, by FAX at (202) 606–0033, or by email at *mspp@opm.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2013–04954 appearing on page 15560 in the **Federal Register** of March 11, 2013, the effective date should be revised to May 13, 2013. In the **Federal Register** of March 26, 2013, in FR Doc. 2013–06782, OPM published corrections to this final rule. The effective date of those corrections should also be revised to May 13, 2013.

In FR Doc. 2013–04954 appearing on page 15560 in the **Federal Register** of Monday, March 11, 2013, and in FR Doc. 2013–06782 appearing on page 18246 in the **Federal Register** of Tuesday, March 26, 2013, the following corrections are made:

1. On page 15560, in the first column, the **DATES** section is corrected to read as follows:

DATES: Effective May 13, 2013, except for § 800.503. OPM will publish a document announcing the effective date of § 800.503 in the **Federal Register**.

2. On page 18246, in the first column, the **DATES** section is corrected to read as follows:

DATES: These corrections are effective May 13, 2013.

U.S. Office of Personnel Management.

Robert H. Shriver,

Assistant Director, National Healthcare Operations.

[FR Doc. 2013–10425 Filed 5–1–13; 8:45 am]

BILLING CODE 6325–64–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 13–325; MB Docket No. 12–261; RM–11677]

Radio Broadcasting Services; Crownpoint, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Navajo Technical College, an Entity of the Navajo Nation, allots FM Channel †297A as a first Tribal Allotment and a first local transmission service at Crownpoint, New Mexico. (The symbol ''†'' will be used to denote a channel reserved as a Tribal Allotment.) Channel †297A can be allotted at Crownpoint, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 35–41–07 NL and 108–08–43 WL, at a site 0.9 km (0.58 miles) northeast of Crownpoint. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective 30 days following publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–261, adopted March 1, 2013, and released March 1, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Crownpoint, Channel †297A.

[FR Doc. 2013–10310 Filed 5–1–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120912442–3395–02]

RIN 0648–XC240

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2013 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Interim final rule; request for comments.

SUMMARY: We are partially approving 17 sector operations plans and contracts for fishing year (FY) 2013, providing allocations of Northeast (NE) multispecies to these sectors, and granting 23 regulatory exemptions. Approval of sector operations plans is necessary to allocate quotas to the sectors and for the sectors to operate. The NE Multispecies Fishery Management Plan (FMP) allows limited access permit holders to form sectors, and requires sectors to submit their operations plans and contracts to us, NMFS, for approval or disapproval. Approved sectors are exempt from certain effort control regulations and receive allocation of NE multispecies (groundfish) based on their members' fishing history. We are accepting additional public comment on the revised explanation of at-sea monitoring (ASM) coverage for FY 2013 for a 30-day period, and revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels for a 15-day period.

DATES: Effective May 1, 2013, through April 30, 2014. Written comments on the revised explanation of at-sea monitoring (ASM) coverage for FY 2013 must be received on or before June 3, 2013. Written comments on revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels must be received on or before May 17, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0007, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0007,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Allison Murphy, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* 978–281–9135; Attn: Allison Murphy.

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

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocations to a sector of a total allowable catch (TAC) for specific NE multispecies species. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized 17 new sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors). The final rule implementing FW 48, which is expected to be published soon after this final rule and to be effective on May 1, 2013, will include the approval or disapproval of several requirements, including a measure that would eliminate dockside monitoring (DSM) requirements, revisions to ASM requirements, and modifications to the minimum sizes for several NE multispecies stocks. The final rule implementing FW 50, which is also expected to be published soon after this final rule, will include the approval or disapproval of several requirements, including commercial annual catch limits (ACLs) and the allocation of southern New England/Mid-Atlantic (SNE/MA) winter flounder to sectors.

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' Sectors are self-selecting, meaning each sector can choose its members.

The NE multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE). These allocations are a portion of a stock's ACL that is available to commercial NE multispecies vessels, and are based on the collective fishing history of a sector's members. Currently, sectors may receive allocations of most large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish. Ocean pout, a small mesh NE multispecies and part of the NE multispecies complex, is also not an allocated stock. Non-allocated stocks may not be landed or sold. A sector determines how to harvest its ACEs and may decide to consolidate operations to fewer vessels.

Because sectors receive an allocation under a quota-based system, the FMP grants sector vessels several ''universal'' exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; the Georges Bank (GB) Seasonal Closure Area; NE multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas. The FMP currently prohibits sectors from requesting exemptions from year-round mortality closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). The final rule implementing FW 48, which is expected to be published soon after this final rule and to be effective May 1, 2013, proposes a measure to allow sectors to request access to portions of the year-round mortality CAs that were not designed to protect essential fish habitat, and not being considered for designation as essential fish habitat in the Omnibus Habitat Amendment action currently being developed. Sectors consequently have requested exemptions from year-round mortality CAs in their FY 2013 operations plans.

Of the 24 approved sectors, we received operations plans and contracts for FY 2013 from 18 sectors. One of the 18 operations plans and contracts was submitted by the Tri-State Sector. Because no vessels elected to join the Tri-State Sector, it does not meet the three member minimum requirement for sectors. Therefore, its proposed operations plan and contract were disapproved. Six of the 24 sectors did not submit operations plans or contracts for FY 2013: The GB Cod Hook Sector; Northeast Fishery Sector I; the State of Maine Permit Bank Sector; the State of New Hampshire Permit Bank Sector; the

Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. Amendment 17 to the FMP allows a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942, March 23, 2012). These permit banks are required to submit a list of participating permits to us by a date specified in the permit bank's Memorandum of Agreement, typically April 1. The State of Maine Permit Bank and the New Hampshire Permit Bank are currently operating under the Amendment 17 requirements.

We determined that the remaining 17 sector operations plans and contracts, and 23 of the 39 regulatory exemptions, are consistent with the goals of the FMP and meet sector requirements outlined in the regulations at § 648.87. The remaining 17 operations plans are similar to previously-approved versions, but include new exemption requests, proposals for industry-funded ASM plans, and two sectors submitted proposals to fish when one or more of their NE multispecies allocations are exhausted. Copies of the operations plans and contracts, and the EA, are available at *http://www.regulations.gov* and from NMFS (see **ADDRESSES**). Of the 17 approved operations plans and contracts, the Northeast Fishery Sector IV and Sustainable Harvest Sector 3 are approved to operate as lease-only sectors. The Sustainable Harvest Sector 3 operation plan has not explicitly prohibited fishing activity, and it may transfer permits to active vessels. We summarize many of the sector requirements in this final rule and grant 23 of the requested regulatory exemptions, but deny the remaining 16 requests for the reasons noted in this rule.

Sector Allocations

Sectors typically submit membership information to us on December 1 prior to the start of the next FY. Due to uncertainty regarding ACLs for several stocks in FY 2013 and a corresponding delay in distributing a letter describing each vessel's potential contribution to a sector's quota for FY 2013, we extended the deadline to join a sector to March 29, 2013. Based on sector enrollment as of March 29, 2013, we have calculated the FY 2013 projected allocations in this final rule. In addition to the membership delay, all permits that change ownership after December 1, 2012, retain the ability to join a sector through April 30, 2013. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2013, to withdraw from a sector and fish in the common pool for FY 2013. We will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2013.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock, as approved in FW 50. Table 1 shows the projected total PSC for each sector by stock for FY 2013. Table 2 shows the total percentage of each commercial sub-ACL each sector would receive for FY 2013, based on their preliminary FY 2013 rosters. Tables 3 and 4 show the allocations each sector would be allocated for FY 2013, also based on their preliminary FY 2013 rosters. At the start of the FY, we provide the final allocations, to the nearest pound, to the individual sectors, and we use those final allocations to monitor sector catch. While the common pool does not receive a specific allocation, the common pool sub-ACLs have been included in each of these tables for comparison.

We do not assign an individual permit a PSC for Eastern GB cod or Eastern GB haddock; instead, we assign a total PSC for these GB stocks to a permit. Each sector's GB cod and GB haddock allocation is then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area.

At the start of FY 2013, we will withhold 20 percent of each sector's FY 2013 allocation until we finalize FY 2012 catch information. Further, we will allow sectors to transfer ACE for 2 weeks to reduce or eliminate any FY 2012 overages. If necessary, we will reduce any sector's FY 2013 allocation to account for a remaining overage in FY 2012. We will notify the Council and sector managers of two-week transfer window in writing and will announce this decision on our Web site at *http://www.nero.noaa.gov/.*

BILLING CODE 3510–22–P

Table 1. Cumulative PSC (percentage) each sector would receive by stock for FY 2013.*^

Sector Name	MRI Count	GB Cod†	GOM Cod	GB Haddock†	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder‡	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
GB Cod Fixed Gear Sector (Fixed Gear Sector)	108	27.7101362	2.42884081	5.76391292	1.83604933	0.01239036	0.30448098	2.755986019	0.90709701	2.10047076	0.02759204	3.73630723	2.73829123	5.68197465	7.37617397	1.64444346
Maine Coast Community Sector (MCCS)	46	0.21083841	4.59677491	0.03943619	2.55120877	0.00351803	0.66351663	1.051832154	7.55627854	5.06061716	0.00656228	1.96283344	2.50133526	4.39575742	3.79863604	0.1936265
Maine Permit Bank	11	0.13357152	1.14928855	0.04435742	1.11977749	0.01377659	0.03195638	0.318013856	1.16457294	0.72691985	0.00021743	0.42515589	0.82162937	1.65243003	1.68807376	0.01800823
Northeast Coastal Communities Sector (NCCS)	26	0.1710655	0.70545792	0.12128594	0.33999365	0.83885021	0.72679065	0.60992942	0.14839354	0.21716705	0.06855213	0.90305609	0.43080503	0.78688343	0.41883159	0.2988038
Northeast Fishery Sector (NEFS) 2	81	6.188814	18.3859731	11.9359911	16.5683791	1.95391907	1.42365583	19.37821484	8.10072134	12.9815256	3.30133309	18.4782786	16.0390001	6.32425123	12.1940283	3.2871185
NEFS 3	80	1.25927679	14.3890163	0.15800963	9.63844924	0.04868	0.41086569	8.570642752	4.08765549	2.87149863	0.03272047	9.32791107	1.3402664	4.73431636	6.78031698	0.77845602
NEFS 4	50	4.13504651	9.6076479	5.31663788	8.3517643	2.16228012	2.27347885	5.468062762	9.29301588	8.49485333	0.69481994	6.23737361	6.64087663	8.05655731	6.14176606	0.8718376
NEFS 5	34	0.83979035	0.01807245	1.10814435	0.30020872	1.68128354	23.8808403	0.505502423	0.52782832	0.73137926	0.61293527	0.0838401	0.07796893	0.12278797	0.10793467	12.8691807
NEFS 6	21	2.85699495	2.92696328	2.92245926	3.83440361	2.69894107	5.17699971	3.56413348	3.87833741	5.17455953	1.42060383	4.36836585	5.30953764	3.91320466	3.29312287	1.92079477
NEFS 7	23	5.20966429	0.39199999	4.95464255	0.47124959	11.3166576	4.44460959	2.858782532	3.59163775	3.29232637	14.8669094	0.83565472	0.58566411	0.82528849	0.72521212	6.34625539
NEFS 8	20	6.14364645	0.49775994	5.67107922	0.21438394	10.9430488	5.60245933	6.419338456	1.65096546	2.54415541	14.5666974	3.38217528	0.53508283	0.50280665	0.59747146	10.1236661
NEFS 9	60	14.2398155	1.73637965	11.6037977	4.79529081	26.7845786	7.97239388	10.38991012	8.27370655	8.27695095	39.570022	2.43945895	5.83126789	4.15313565	4.22826207	18.5931367
NEFS 10	44	0.72938852	5.24263643	0.2514571	2.53225576	0.01699956	0.54851304	12.78785243	1.77246791	2.42605724	0.01384801	26.9228141	0.54820424	0.91303047	1.3930973	0.74995849
NEFS 11	42	0.39377347	11.2180586	0.03566645	2.35454724	0.00080292	0.01734668	2.104580535	1.35256504	1.46688274	0.0008961	1.9337841	0.93657382	2.3447868	6.46136539	0.01808927
NEFS 12	11	0.01543632	2.42509402	0.00263497	0.85919914	0.00075483	0.00225466	0.482777447	0.74897571	0.6075265	0.00250315	0.31608371	1.05934489	2.49635418	2.96055727	0.00359645
NEFS 13	54	7.95752564	0.94828136	16.0841772	0.98811725	24.9327838	19.0663115	5.031610077	5.1623228	6.26569658	7.46735879	2.34088467	3.98066441	1.73926129	2.27098506	11.0308162
New Hampshire Permit Bank	4	0.00212423	1.13721108	0.00025965	0.03111747	2.0573E-05	2.029E-05	0.021810976	0.02849	0.00616	5.9866E-06	0.06027627	0.01939591	0.08126812	0.1108933	7.8926E-05
Sustainable Harvest Sector 1	118	19.6967932	19.4671206	33.08583	42.1888518	13.1930148	8.23227672	12.8398961	39.3154315	34.2745736	16.3366871	10.2540575	50.0164018	50.4217908	38.7300432	18.4512242
Sustainable Harvest Sector 3	21	0.40204015	0.51684787	0.51916086	0.18474566	2.10525891	3.15510269	2.066674464	0.67535524	0.76205815	0.43290774	2.30829664	0.19264919	0.15391626	0.05705049	1.6746768
Common Pool	526	1.70425801	2.21057526	0.38105969	0.84000715	1.29244059	16.0661266	2.774449163	1.76418161	1.71862123	0.5768279	3.68339217	0.39504037	0.70019818	0.66617809	11.1262319

*The data in this table are based on preliminary FY 2013 sector rosters.

^Percentages have been rounded to two decimal places in this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is actually allocated a small amount of that stock.

† For FY 2013, 5.31 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 15.09 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 2. Proposed ACE (in 1,000 lb), by stock, for each sector for FY 2013.*^

Sector Name	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder†	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	56	1048	44	477	2852	8	TBD	4	29	28	28	2	59	612	420	2097	44
MCCS	0	8	84	3	20	11	TBD	8	11	237	68	1	31	559	325	1080	5
Maine Permit Bank	0	5	21	4	22	5	TBD	0	3	36	10	0	7	184	122	480	0
NCCS	0	6	13	10	60	1	TBD	9	6	5	3	5	14	96	58	119	8
NEFS 2	13	234	336	988	5905	68	TBD	18	205	254	175	257	291	3583	467	3466	88
NEFS 3	3	48	263	13	78	40	TBD	5	91	128	39	3	147	299	350	1927	21
NEFS 4	8	156	176	440	2630	34	TBD	29	58	291	114	54	98	1483	595	1746	23
NEFS 5	2	32	0	92	548	1	TBD	300	5	17	10	48	1	17	9	31	343
NEFS 6	6	108	54	242	1446	16	TBD	65	38	121	70	110	69	1186	289	936	51
NEFS 7	11	197	7	410	2451	2	TBD	56	30	112	44	1156	13	131	61	206	169
NEFS 8	12	232	9	469	2806	1	TBD	70	68	52	34	1133	53	120	37	170	270
NEFS 9	29	538	32	960	5741	20	TBD	100	110	259	111	3078	38	1303	307	1202	496
NEFS 10	1	28	96	21	124	10	TBD	7	135	55	33	1	424	122	67	396	20
NEFS 11	1	15	205	3	18	10	TBD	0	22	42	20	0	30	209	173	1837	0
NEFS 12	0	1	44	0	1	4	TBD	0	5	23	8	0	5	237	184	842	0
NEFS 13	16	301	17	1331	7958	4	TBD	240	53	162	84	581	37	889	129	646	294
New Hampshire Permit Bank	0	0	21	0	0	0	TBD	0	0	1	0	0	1	4	6	32	0
Sustainable Harvest Sector 1	40	745	356	2738	16370	174	TBD	103	136	1231	461	1271	162	11172	3726	11009	492
Sustainable Harvest Sector 3	1	15	9	43	257	1	TBD	40	22	21	10	34	36	43	11	16	45
Sectors Total	**199**	**3716**	**1789**	**8245**	**49288**	**409**	**TBD**	**1055**	**1027**	**3075**	**1322**	**7733**	**1518**	**22249**	**7338**	**28235**	**2371**
Common Pool	3	64	40	32	189	3	TBD	202	29	55	23	45	58	88	52	189	297

*The data in this table are based on preliminary FY 2013 sector rosters. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

†FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

Table 3. Proposed ACE (in metric tons), by stock, for each sector for FY 2013.*^†

Sector Name	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder†	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	25	475	20	216	1294	3	TBD	2	13	13	13	1	27	277	190	951	20
MCCS	0	4	38	1	9	5	TBD	4	5	107	31	0	14	253	147	490	2
Maine Permit Bank	0	2	10	2	10	2	TBD	0	2	17	4	0	3	83	55	218	0
NCCS	0	3	6	5	27	1	TBD	4	3	2	1	2	6	44	26	54	4
NEFS 2	6	106	153	448	2679	31	TBD	8	93	115	79	116	132	1625	212	1572	40
NEFS 3	1	22	119	6	35	18	TBD	2	41	58	18	1	67	136	159	874	9
NEFS 4	4	71	80	200	1193	16	TBD	13	26	132	52	25	45	673	270	792	11
NEFS 5	1	14	0	42	249	1	TBD	136	2	7	4	22	1	8	4	14	156
NEFS 6	3	49	24	110	656	7	TBD	30	17	55	32	50	31	538	131	425	23
NEFS 7	5	89	3	186	1112	1	TBD	25	14	51	20	525	6	59	28	94	77
NEFS 8	6	105	4	213	1273	0	TBD	32	31	23	16	514	24	54	17	77	122
NEFS 9	13	244	14	436	2604	9	TBD	45	50	117	50	1396	17	591	139	545	225
NEFS 10	1	13	44	9	56	5	TBD	3	61	25	15	0	192	56	31	180	9
NEFS 11	0	7	93	1	8	4	TBD	0	10	19	9	0	14	95	79	833	0
NEFS 12	0	0	20	0	1	2	TBD	0	2	11	4	0	2	107	84	382	0
NEFS 13	7	136	8	604	3610	2	TBD	109	24	73	38	263	17	403	58	293	133
New Hampshire Permit Bank	0	0	9	0	0	0	TBD	0	0	0	0	0	0	2	3	14	0
Sustainable Harvest Sector 1	18	338	162	1242	7425	79	TBD	47	62	558	209	576	73	5068	1690	4993	223
Sustainable Harvest Sector 3	0	7	4	19	117	0	TBD	18	10	10	5	15	16	20	5	7	20
Sectors Total	**90**	**1686**	**812**	**3740**	**22356**	**185**	**TBD**	**478**	**466**	**1395**	**600**	**3508**	**688**	**10092**	**3329**	**12807**	**1075**
Common Pool	2	29	18	14	86	2	TBD	92	13	25	10	20	26	40	23	86	135

*The data in this table are based on preliminary FY 2013 rosters. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

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Sector Operations Plans and Contracts

We received 18 sector operations plans and contracts by the September 4, 2012, deadline. Each sector elected to submit a single document that is both its contract and operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds each member to the sector. The sector formerly known as the Port Clyde Community Groundfish Sector has submitted its operations plan under a new name, the Maine Coast Community Sector. While the Tri-State Sector submitted an operations plan for FY 2013, no members elected to join the sector. The Tri-State Sector's operations plan is therefore disapproved because the sector did not meet membership requirements. Most sectors proposed operations plans are for a single FY, i.e., FY 2013. NEFS 4 submitted a 2-yr operations plan. Because the EA only analyzes operations in FY 2013, NEFS 4 is only approved to operate in FY 2013. Each sector's operations plan, and sector members, must comply with the regulations governing sectors, which are found at § 648.87. In addition, each sector and sector member must conduct fishing activities as detailed in its approved operations plan.

Any permit holder with a limited access NE multispecies permit that was valid as of May 1, 2008, is eligible to participate in a sector, including any inactive permit currently held in confirmation of permit history (CPH). If a permit holder officially enrolls a permit in a sector and the FY begins, then that permit must remain in the sector for the entire FY, and cannot fish in the NE multispecies fishery outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted and detailed in the letter of authorization (LOA) issued by the Regional Administrator. If, during a FY, a sector requests an exemption that we have already approved, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any amendments require modifications to LOAs, we would include these changes in updated LOAs and provide the updated LOAs to the appropriate sector's members.

Each sector is required to ensure that it does not exceed its ACE during the FY. Sector vessels are required to retain all legal-sized allocated NE multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated NE multispecies stocks by a sector's vessels count against the sector's allocation. Catch from a sector trip (e.g., not fishing under provisions of a regulatory NE multispecies exempted fishery or with exempted gear) targeting dogfish, monkfish, skate, or lobster (with non-trap gear) would be deducted from the sector's ACE, because these trips use gear capable of catching groundfish. Catch from a trip in an exempted fishery does not count against a sector's allocation, because the catch is assigned to a separate ACL sub-component.

We provide sectors with calculated discard rates to apply to unobserved sector trips, based on discard rates from observed trips. Amendment 16 required sectors to develop independent third-party DSM programs to verify landed weights reported by the dealer. We previously funded DSM for FY 2010 and part of FY 2011, but suspended DSM for the remainder of FY 2011 and 2012. The FW 48 proposed rule has proposed the elimination of the requirement for DSM for FY 2013.

For FYs 2010 and 2011, there was no requirement for an industry-funded ASM program, but NMFS was able to fund an ASM program with a target ASM coverage rate of 30 percent of all trips. For FY 2012, we conducted an analysis to determine the FY 2012 ASM coverage rate that would be necessary to achieve the same level of precision as attained by the target 30-percent ASM coverage rate used for FY's 2010 and 2011, and ultimately set a target ASM coverage rate for FY 2012 of 25 percent, which was 17 percent more than the 8-percent Northeast Fishery Observer Program (NEFOP) coverage that supports the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments.

The regulations require sectors to design, implement, and fund an ASM program in FY 2013 that will provide a level of ASM coverage specified by NMFS. Amendment 16 regulations require NMFS to specify a level of ASM coverage that is sufficient to at least meet the same coefficient of variation (CV) specified in the SBRM and also to accurately monitor sector operations. The final rule implementing FW 48, should it be approved, clarifies what level of ASM coverage is expected to meet these goals. Regarding meeting the SBRM CV level, FW 48 states that this determination should be made at the overall stock level, which is consistent with the level NMFS determined was necessary in FY 2012. FW 48 also proposes to amend the goals of the sector monitoring program to achieve an accuracy level sufficient to minimize effects of potential monitoring bias to the extent practicable, while maintaining as much flexibility as possible to enhance fleet vitality.

Taking these provisions of FW 48 into account, and interpreting the ASM monitoring provision in the context of Magnuson-Stevens Act requirements and National Standards, we have determined that the appropriate level of ASM coverage should be set to meet the CV requirement specified in the SBRM, and minimize the cost burden to the extent practicable, while still providing a reliable estimate of overall catch by sectors needed to sufficiently monitor ACEs and ACLs. Based on this standard, NMFS has determined that the appropriate ASM coverage rate for FY 2013 is 14 percent, in addition to the expected 8-percent coverage rate provided under NEFOP. We expect these two programs to result in coverage of 22 percent of all sector trips, and we will use the discards from these observed and monitored trips to calculate discards for unobserved sector trips. We have published a more detailed summary of the supporting information, explanation and justification for this decision at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.* This summary has since been updated to address additional comments received from Oceana on the settlement agreement.

This summary, in addition to providing sectors and the public with a full and transparent explanation of the appropriate level of ASM coverage of sector operations, complies with a settlement agreement entered into by NMFS and Oceana, Inc. The settlement agreement resolved a lawsuit brought by Oceana challenging the approval of the 2012 sector operations plans primarily on grounds that the agency failed to adequately justify and explain that the ASM coverage rate specified for FY 2012 would accurately monitor the catch to effectively enforce catch limits in the groundfish fishery. We are providing additional opportunity to comment on this provision through this interim final rule.

Prior to the publication of the proposed rule, we did not have confirmation on funding resources for FY 2013. We have since announced that we will pay for ASM coverage of sector trips during FY 2013. Therefore, the sector's ASM programs for FY 2013 are no longer applicable, and have been removed from the sector's operations plans.

Sectors are required to monitor their allocations and catch, and submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all fishing operations in that stock area until it acquires more fish, unless that sector has an approved plan to fish without ACE for that stock. ACE may be transferred between sectors, but a transfer to or from common pool vessels are prohibited. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract. A sector, permit/vessel owner, and vessel operator participating in the sector may be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector operations plan submitted for FY 2013 states that the sector would withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract details the method for initial ACE sub-allocation to sector members. For FY 2013, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector.

Approved FY 2013 Exemptions

Previously Approved Exemptions Approved for FY 2013 (1–16)

We approve exemptions from the following requirements for FY 2013, all of which have been previously requested and approved: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) prohibition on a vessel hauling another vessel's gillnet gear; (4) limits on the number of gillnets that may be hauled on GB when fishing under a NE multispecies/monkfish DAS; (5) limits on the number of hooks that may be fished; (6) DAS Leasing Program length and horsepower restrictions; (7) prohibition on discarding; (8) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (9) powering vessel monitoring systems (VMS) while at the dock; (10) DSM for vessels fishing west of 72°30′ W. long.; (11) DSM for Handgear A-permitted sector vessels; (12) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA); (13) prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (14) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, including the use of codend mesh as small as 4.5-inch (11.4-cm); (15) prohibition on a vessel hauling another vessel's hook gear; and (16) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. These exemptions were used successfully, consistent with the purpose for which they were approved, and benefitted sector operations. The rationale for their approval remains valid. A detailed description of these 16 previously approved exemptions can be found in the FY 2012 proposed rule for sector operations (77 FR 8780, February 15, 2012), which is also available at: *http://www.nero.noaa.gov/sfd/multifr/77FR8780.pdf.*

We approved one of the exemptions above with modifications from its initial approval. We expanded the exemption from using 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM. The exemption originally allowed fishing with 6.0-inch (15.2-cm) codend mesh, and was modified to allow the use of codend mesh size as small as 4.5-inch (11.4-cm) (78 FR 14226, March 5, 2013). The modified exemption as designed to allow more opportunity to catch underutilized redfish ACE. This final rule is available at: *http://www.nero.noaa.gov/regs/2013/March/13redfishfr.pdf.*

We approved this exemption with several requirements, based on catch information from ongoing research. Monthly catch thresholds (80-percent redfish requirement and no more than 5 percent NE multispecies discard requirement) are used to ensure that fishing under this exemption will not adversely affect other NE multispecies stocks. Along with allowing sectors to use a codend with mesh as small as 4.5 inches (11.4 cm) when an observer or at-sea monitor is onboard, we require sectors to develop industry-funded at-sea monitoring programs for trips specifically targeting redfish because monitoring all trips targeting redfish is necessary to adequately monitor bycatch thresholds.

To facilitate monitoring of trips under this exemption, the approved redfish exemption includes a requirement for a vessel to declare whether or not it intends to use the exemption through the trip start hail. A vessel intending to take a redfish trip is required to enter ''R1'' into the free text field of the trip start hail to identify the trip. This hail report will help NMFS, and the sector manager, to identify a trip fishing under the redfish exemption for monitoring purposes.

We will monitor the impacts of the 4.5-inch (11.4-cm) redfish exemption, compliance with monthly catch thresholds, and the impacts of the industry-funded monitoring program on required monitoring programs. We will revoke the 4.5-inch (11.4-cm) redfish exemption during the FY, if necessary, to mitigate negative impacts, and notify sectors and the public, as described later in this rule. Additional information on the requirements for 100-percent industry-funded monitoring programs for exemptions is provided below under Additional Industry-Funded ASM.

Exemptions of Concern That are Approved for FY 2013 (17–18)

In FY 2012, we granted sectors exemptions from the following requirements, which we again approve for FY 2013: (17) Limits on the number of gillnets imposed on Day gillnet vessels; and (18) gear requirements in the Eastern U.S./Canada Management Area. We raised concern with continuing to grant these requests based on data analyzed for this rule and requested additional comment on these exemptions.

17. Limits on the Number of Gillnets Imposed on Day Gillnet Vessels

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA) to prevent an uncontrolled increase in the number of nets being fished that would undermine the applicable DAS effort controls. The limits are specific to the type of gillnet within each RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the SNE and MA RMAs (§ 648.80(b)(2)(iv)). We previously approved this exemption in FYs 2010,

2011, and 2012 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. Sectors argued that gillnet limits designed to control fishing effort are no longer necessary because sectors' ACEs limit overall fishing mortality. In the proposed rule we stated that a preliminary effort analysis of all sector vessels using gillnet gear indicates an increase in gear used in the RMAs with no corresponding increase in catch efficiency. The result was more gear being deployed, thereby increasing the opportunity for interactions with protected species without the benefit of increased catch. We raised concern that continued approval of the exemption on gillnet limits could ultimately lead to a rise in interactions with protected species.

Industry, sectors, Maine Department of Marine Resources (DMR), and the Council all supported the continued approval of the exemption, noting negative financial impacts if the exemption were not approved, and efforts made to increase pinger compliance to mitigate concerns for harbor porpoise. However, as several commenters indicated, available data indicate that harbor porpoise interactions have decreased since the approval of this exemption. The Conservation Law Foundation (CLF), Pew, the Union of Concerned Scientists, and Massachusetts Division of Marine Fisheries (MA DMF) raised additional concerns for cod, impacts to non-target species, and the risk for lost gear. We note the reduced interactions with harbor porpoise and approve this exemption again for FY 2013. Based on our concern for spawning cod and the comment by MA DMF, after consulting with the NMFS Northeast Fisheries Science Center (NEFSC) about this concern, we are restricting the use of this exemption to seasons with minimal cod spawning in the GOM, i.e., late spring. Therefore, a vessel fishing in the GOM RMA may use this exemption seasonally, but will be restricted to the 100-net gillnet limit in blocks 124 and 125 in May, and in blocks 132 and 133 in June. A vessel fishing in GB RMA, SNE RMA, and MA RMA, the GOM outside of these times and areas will have no additional restrictions. We will continue to consider potential protected species concerns in the annual approval of this exemption.

18. Gear Requirements in the Eastern U.S./Canada Management Area

The regulations require a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area to use either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)) to ensure that the U.S./Canada quotas of Eastern GB cod and haddock, and GB yellowtail flounder are not exceeded. We approved an exemption from this requirement in FYs 2011 and 2012 to enhance operational flexibility of sectors, reasoning that their overall fishing mortality would continue to be restrained by the sector ACEs.

We raised concern with the continued approval of this exemption because the proposed FY 2013 ACLs for GB cod and GB yellowtail flounder proposed by the Council in FW 50 are dramatically lower than previous years when we granted this exemption. Several comments were submitted supporting the approval of this gear exemption. Commenters argued that effort controls, such as selective gear requirements, are no longer necessary, since sectors are restricted by an ACE. They also stated that sectors should be given the ability to manage their operations to maximize harvest of their ACEs, and the decision to restrict vessels to selective gear should be left to the sector. Based on these comments, we are again approving this exemption for FY 2013.

Approved Exemptions That Had Previously Been Disapproved (19–21)

We approve three previously disapproved exemption requests from the following requirements for FY 2013: (19) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (20) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; and (21) DSM requirements for a vessel using hand-operated jig gear. A detailed description of each exemption is included below:

19. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP consists of a portion of the Eastern U.S./Canada Area and a portion of CA II. We implemented this SAP in FW 40A to provide a vessel with additional opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The May 1 through December 31 opening of the SAP allowed a vessel to fish in the area using gear that reduces the catch of cod and other stocks of concern. In FW 42 (71 FR 62156; October 23, 2006), we extended the approval of this SAP and shortened the season to August 1 through December 31 to further reduce cod catch. We subsequently approved additional gear types for use in this SAP through other actions.

For FY 2012, sectors requested an exemption from the seasonal restrictions of the Eastern U.S./Canada Haddock SAP, to access the SAP area year-round. Because NMFS was unclear whether the Council intended to allow sector exemptions from the SAP seasonal restrictions, we disapproved these exemptions in FY 2012. We subsequently proposed the exemption in FY 2013, but expressed concern that an exemption from the seasonal restrictions of SAPs could have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn. The Council subsequently discussed these exemptions in June 2012. In a letter dated June 22, 2012, the Council asked us to open the Eastern U.S./Canada Haddock SAP to trawl vessels using restrictive gear on May 1 of a given FY in order to provide additional fishing opportunities for the NE multispecies fishery to target a healthy stock—GB haddock.

Sectors argued that, because their catch is restricted by ACE, their access to the SAP area, including the northern tip of CA II, should not be seasonally restricted. Sectors further argued that impacts to the physical environment and essential fish habitat (EFH) will be negligible, because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

The proposed rule stated that data initially provided by the NEFSC suggested that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Because of this, we raised a concern in the proposed rule that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn, and proposed to open the SAP from June 1 through December 31.

The Council submitted comments regarding seasonal access to the Eastern U.S./Canada Haddock SAP, citing a recently-completed study conducted by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II, and that found low densities of winter flounder in the area in May. We concur that the updated Smolowitz *et al.* 2012 study shows that GB winter flounder spawning generally does not occur in May. Thus, it is appropriate to

provide access to this SAP beginning in May.

We also received a comment that we should provide access to the SAP in January, given that we raised concern for GB cod from only February through April. The proposed rule incorrectly cited the season of concern for GB cod raised by the NEFSC as beginning in February when it actually is January through April for the Eastern U.S./Canada Haddock SAP (Berrien and Sibunka, 1999). Therefore, we do not believe it is appropriate to extend the season beyond the closure of the SAP on December 31. Based on this information presented by the Council and the general public, we approve an exemption to extend the SAP season to allow access to this area from May 1 through December 31.

For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. For FY 2013, we proposed limiting a sector vessel to use the gear approved for sector vessels in the Eastern U.S/Canada Haddock SAP, which includes: Hook gear, gillnet gear, haddock separator trawl, Ruhle trawl, and flounder net. However, based on comments received noting the need for flexibility and the limitations on fishing mortality in sector ACEs, we are extending the exemption from gear requirements in the Eastern U.S./Canada area (exemption 18) to the SAP, and we are allowing vessels to access the Eastern U.S./Canada SAP with any gear approved for the Eastern U.S./Canada area because sectors are restricted by their ACEs. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

20. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

We implemented the CA II Yellowtail Flounder SAP through Amendment 13 in 2004 to provide an opportunity for vessels to target yellowtail flounder in CA II on a Category B DAS. This SAP requires a vessel to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area during the open season from June 1 through December 31. In 2005, we extended the approval of this SAP though FW 40B, but shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Through Amendment 16, we further revised this SAP in 2010 by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open for targeting of GB yellowtail flounder. Sectors are currently required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When the season is open only to target haddock, a vessel may only use approved trawl gear or hook gear; the flounder net is not authorized. We implemented these gear requirements to limit vessels from catching yellowtail flounder when the SAP was open only for targeting haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area of CA II. Sectors are required to use the same approved gears as the common pool (i.e., haddock separator trawl, Ruhle trawl, or hook gear) to reduce the advantage sector vessels have over common pool vessels. We initially put the seasonal restriction in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer, and spawning NE multispecies in the spring. Sectors argue that their catch is restricted by ACE, and their access to the SAP area in CA II should not be restricted. Sectors further argue that impacts to the physical environment will be negligible because any increase in effort will be minor, and the portion of CA II included in this SAP is outside any HAPC.

The proposed rule for this action stated that data initially provided by the NEFSC suggested that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Because of this, we raised concern our in the proposed rule that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn, and proposed to open the SAP from June 1 through December 31.

The Council submitted comments regarding seasonal access to the CA II Yellowtail Founder/Haddock SAP, citing a recently completed study conducted by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II, and that found low densities of winter flounder in the area in May. We concur that the updated Smolowitz *et al.* 2012 study shows that GB winter flounder spawning generally does not occur in May. Thus, it is appropriate to provide access to this SAP beginning in May. Based on this new information presented by the Council and the general public, we approve an exemption to extend the SAP season to allow access to this area from May 1 through January 31.

For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. For FY 2013, we proposed limiting a sector vessel to use the gear approved for sector vessels in the CA II Yellowtail Flounder/Haddock SAP, which includes hook gear, haddock separator trawl, and Ruhle trawl. However, based on public comments, we are extending the exemption from gear requirements in the Eastern U.S./Canada area (exemption 18) to the SAP, also allowing vessels to use a standard otter trawl in the CA II Yellowtail Flounder/Haddock SAP because sectors are restricted by their ACEs,. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

21. DSM Requirements for Vessel Using Hand-Operated Jig Gear

In the NE multispecies fishery, we define jigging as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, and which is moved with an up and down motion (§ 648.2). Jigging gear is not exempted gear; therefore, a vessel using this gear is required to participate in the DSM program so that offload of all NE multispecies trips are adequately monitored.

We received a request to exempt sector vessels using jig gear from DSM requirements, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector argues that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

To gauge the potential impact of approving this exemption, we reviewed observer and ASM data from the 12 monitored trips in FYs 2010 and 2011 that used jig gear. For these trips, discards accounted for approximately 6 percent of the roughly 16,000 lb (7,257 kg) of catch. We believe these discards to be a *de minimis* amount, and are therefore approving this exemption. Because FW 48 is considering the elimination of the DSM program, the approval of this exemption, as well as the previously approved DSM

exemptions, may be superseded by final decisions on FW 48 measures. Should the FW 48 measure to eliminate the DSM program be approved, exemptions from all DSM requirements become unnecessary.

New Exemptions Approved for FY 2013 (22–23)

Two new exemption requests from the following requirements are approved for FY: (22) The prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard; and (23) sampling exemption. A detailed description of each exemption is included below:

22. Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.6(l)) to help rebuild the stock beginning in FY 2010. Currently, a vessel with GOM or GB winter flounder on board can transit through the SNE/MA winter flounder stock area, but cannot fish in the SNE/MA winter flounder stock area, and its gear must be stowed in accordance with the provisions of § 648.23(b). This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area.

Sectors requested an exemption from the prohibition on fishing in the SNE/MA winter flounder stock area when GOM or GB winter flounder is onboard the vessel, provided a NEFOP observer or at-sea monitor is assigned to the trip. Sectors asserted that the data collection protocols used by observers and at-sea monitors, including documentation of catch (both landings and discards), as well as stock area, would provide the data necessary to differentiate and correctly apportion the winter flounder catch onboard to the appropriate stock area. Sectors believe that, if approved, this exemption would increase flexibility and efficiency of fishing vessels, allowing vessels to move freely between stock areas when an observer or at-sea monitor is onboard, increase gross revenue per trip, and decrease operating costs. We agree, and, we are approving this exemption for FY 2013. Please note that FW 50 has proposed a measure to allocate this stock to sectors beginning in FY 2013. Thus, this exemption will no longer be necessary if this provision is approved in FW 50.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are approving several of these requests, provided an industry-funded monitor is deployed on 100 percent of trips using the exemptions, including the exemption from the prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard. Additional information on the requirements for 100-percent industry-funded monitoring programs for exemptions is provided below under Additional Industry-Funded ASM.

This approved exemption includes a requirement for a vessel to declare whether or not it intends to use the exemption through the trip start hail. A vessel intending to take a trip in the SNE/MA winter flounder stock area with winter flounder onboard is required to enter ''F4'' in the free text field of the trip start hail to identify the trip for monitoring purposes.

23. Sampling Exemption

Conducting scientific research on regulated fishing trips may require special permits, depending on the activities proposed. A temporary research permit authorizes a federally permitted fishing vessel that is accompanied by a research technician, typically staff for the principal investigator, to temporarily retain fish that are not compliant with applicable fishing regulations to collect catch data such as length and weight. Under a temporary possession permit, a vessel may be exempt from specific regulations, including minimum fish sizes, closures, and possession limits. Sampled fish are returned to the sea as soon as practicable after sampling.

Some sectors proposed independent sampling programs, where data would be collected from fish that otherwise must be immediately discarded, as described above. Sectors already provided the information required in an application as part of the sector's operations plan. Through this rule, we are approving sectors for temporary possession permits for research purposes. This provision would be included in a sector vessel's LOA, which will aid enforcement officials in determining approved activities, with the same restrictions as when a temporary permit is obtained through the application process.

Disapproved FY 2013 Exemption Requests

Previously Approved Exemption Disapproved for FY 2013

Sectors again requested the GOM sink gillnet mesh exemption in May, and January through April. This exemption was previously approved to provide seasonal access to target GOM haddock. Given the small ACL proposed for GOM haddock in FW 50, we are disapproving this exemption. A detailed description of this exemption is included below:

24. GOM Sink Gillnet Mesh Exemption in May, and January Through April

The minimum mesh size requirements of 6.5 inches (16.5 cm) in the GOM RMA was implemented to reduce overall mortality on groundfish stocks, to reduce discarding, and improve survival of sub-legal groundfish. We previously approved two separate seasonal exemptions from the minimum mesh size requirement in the GOM for FYs 2010–2012 to allow a sector vessel to use 6-inch (15.2-cm) mesh stand-up gillnets in the GOM RMA. The initial exemption, approved in FY 2010, allowed the use of the exemption in January–April. The second exemption, approved in FY 2011, added the month of May. In the proposed rule for FY 2013, we combined these requests into a single exemption. This exemption provides the opportunity to catch more GOM haddock, a stock previously considered rebuilt, during the months that haddock are most prevalent.

We raised two concerns regarding the status of GOM haddock and potential impacts to protected species in the proposed rule, and received numerous comments. Most industry members, one sector, sector support groups, and the Maine Department of Marine Resources (ME DMR) commented in favor of granting the exemption. One sector and the MA DMF recommended disapproval, agreeing with our concerns highlighted in the proposed rule.

As discussed in the proposed rule, we officially notified the Council on May 30, 2012, that the GOM haddock stock is subject to overfishing and is approaching an overfished condition, based on results from an operational stock assessment. As the GOM haddock ACL and corresponding sector ACEs are reduced, GOM haddock will likely become a limiting stock, and an exemption that encourages targeting of such a limiting stock is not justifiable. Therefore, we disapprove this exemption for FY 2013.

New Exemption Request That Is Disapproved for FY 2013

Sectors submitted an exemption request from the prohibition on combining small-mesh exempted fishery and sector trips for FY 2013. Due to monitoring and enforcement concerns, we are disapproving this exemption. A detailed description of this exemption is included below:

25. Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips

We reduced minimum mesh size restrictions for the GOM, GB, and SNE regulated mesh areas (RMAs) (§ 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i)) under Amendment 13 (69 FR 22906, 4/27/04) and FW 42, to reduce overall mortality on groundfish stocks, change the selection pattern of the fishery to target larger fish, improve survival of sublegal fish, and allow sublegal fish more opportunity to spawn before entering the fishery. FW 42 set requirements for trawl codends in the SNE RMA to be made of either square or diamond mesh no smaller than 6.5 inches (16.5 cm), in an effort to reduce discards of yellowtail flounder and increase the rate of yellowtail flounder rebuilding.

Approved large and small-mesh exempted fisheries, as described in the regulations, allow a vessel to fish for particular non-regulated NE multispecies, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the NE multispecies minimum mesh size allowed in each RMA. To approve an exempted fishery, after consultation with the Council, we must determine the level of bycatch of regulated NE multispecies (i.e., the regulatory standard requires that bycatch of regulated species must be less than 5 percent, by weight, of total catch), and that the exempted fishery will not jeopardize fishery mortality objectives, solicit comment, and publish implementing rulemaking. Exempted fishery regulations allow vessels to fish with small mesh, but prohibit the retention of regulated NE multispecies.

Sectors requested an exemption that would allow their vessels to possess and use both small mesh in an exempted fishery, and large mesh as they normally would on a standard sector trip, on the same fishing trip for the following small-mesh exemption areas: The Cultivator Shoal Whiting Fishery Exemption Area, the SNE Exemption Area, and the MA Exemption Area. The goal was to allow a vessel to engage in exempted fisheries while on a sector trip and to increase efficiency of time at sea and gross revenue per trip while decreasing vessel-operating costs. Sectors stated that they would only utilize this exemption when either a NEFOP observer or an at-sea monitor is aboard the vessel. The sectors proposed to count any allocated NE multispecies caught on these combined trips against the sector's allocation. We received numerous comments in support of this exemption from industry, sectors, and ME DMR.

We raised several concerns with this exemption in the proposed rule, including concerns about potential monitoring requirements, discussed previously under Exemption 22. We expressed concern that, through this exemption, a vessel could circumvent the regulations and target allocated NE multispecies with small mesh, and therefore increase catch of juvenile fish, negatively affecting fish stocks. Currently, large and small-mesh exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, and do not receive ASM coverage. Because exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, only a subset of NEFOP observers receive training for these small mesh fisheries, which is further discussed in the response to Comment 45. Therefore, the vast majority of NEFOP observers and at-sea monitors do not receive the training necessary to accurately observe the small-mesh portion of these trips as proposed, and we are concerned about accurately monitoring both portions of these proposed trips. In addition, we have some concern that observers and at-sea monitors could be viewed as taking on an enforcement role when monitoring these trips as proposed. The U.S. Coast Guard expressed concern that approval of this exemption would render minimum fish and mesh sizes unenforceable. Several environmental groups and one sector echoed our concern for potential impacts to juvenile fish. Given these concerns, we are disapproving an exemption from the prohibition on combining small-mesh exempted fishery and sector trips for FY 2013.

Exemptions That Are Disapproved for FY 2013 Due to Separate Rulemaking (26–30)

Amendment 16 prohibited sectors from requesting access to year-round closed areas. To increase operational flexibility for vessels participating in sectors as mitigation for reduced ACLs, FW 48 proposes allowing a sector to request access to year-round mortality closure areas through its sector operations plan. Sectors would not be allowed to request access to areas that are closed to protect EFH.

In their FY 2013 operations plans, sectors have requested exemptions for access to the following five year round CAs: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; and (30) year-round access to the Nantucket Lightship Closed Area. Consideration of these requests is contingent upon approval of the FW 48 measure allowing sectors to request access to year-round closed areas. Also, because additional analysis is needed, and this analysis would likely delay the approval of sector operations plans and allocations beyond May 1, 2013, we are disapproving all exemption requests for access to year-round mortality CAs through this rule. We intend to consider these exemption requests for access to year-round mortality closed areas in a separate action, and anticipate implementation of that action early in FY 2013.

Requested Exemptions Are Disapproved Because They Are Prohibited

We are disapproving, and did not analyze in the EA, the following five exemption requests, because they are prohibited or not authorized by the NE multispecies regulations: (31) ASM requirements; (32) ASM requirements for vessels using jig gear; (33) ASM requirements for handgear vessels; (34) year-round access to the Eastern U.S./Canada Area for trawl vessels; and (35) the prohibition on a vessel hauling another vessel's trap gear.

Sectors may not be exempted from permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements and DSM requirements). In a letter dated September 1, 2010, we notified the Council that we interpret the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), we also requested that the Council define which reporting requirements sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM. Therefore, we did not consider requests for exemptions from ASM.

We are disapproving two additional FY 2013 exemption requests (year-round access to the Eastern U.S./Canada Area for trawl vessels and the prohibition on a vessel hauling another vessel's trap gear) because they fall outside the authorization for exemptions provided in the NE multispecies regulations. The Regional Administrator may impose restrictions or in-season adjustments on a vessel

fishing in the Eastern U.S./Canada Area, consistent with the Administrative Procedure Act (APA), including: Gear restrictions; modification of access to the area or the number of trips in the area; or closure of the area to prevent over-harvesting or to facilitate achieving a quota. Since this discretion is left to the Regional Administrator, this request will be considered when determining access to the Eastern U.S./Canada Area, but cannot be considered under the exemption process. Also, a request for an exemption from tagging requirements for trap gear is disapproved because the tagging requirement regulations are not included in the NE multispecies regulations. Vessels holding an American lobster permit are bound by the American lobster tagging requirements.

Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided

We are disapproving the following four exemption requests because they were previously rejected, and the requesting sectors provided no new information that would change our previous decision: (36) Minimum hook size for demersal longline; (37) access to the April GOM Rolling Closure (Blocks 124 and 132); (38) access to the May GOM Rolling Closure (Block 138); and (39) all DSM requirements. We did not analyze these exemptions in the FY 2013 sector EA because no new information was available to change the analyses previously published in past EAs. Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rule for FY 2012 (77 FR 8780, February 15, 2012; and 77 FR 26129, May 2, 2012, respectively), and its accompanying EA (as well as previous years' rules and EAs).

Additional Sector Provisions

A sector may also include additional provisions in its operations plan, including additional requirements for or restrictions of fishing practices. A detailed description of these provisions is included below:

Provisions To Fish Without ACE

Under regulations at § 648.87(b)(2)(xiv), a sector may propose a program that would allow fishing on a sector trip in fisheries that are known to have a bycatch of NE multispecies when it does not have ACE for certain NE multispecies stocks, if the sector can show that the limiting NE multispecies stock(s) will be avoided. The regulations currently restrict this provision to participation in other fisheries (e.g., dogfish, monkfish, and skate) that have a bycatch of groundfish that would count against the sector's ACE. We had intended to make a correction to this regulation to make it consistent with Section 4.2.3.4 (Mortality/Conservation Controls) of Amendment 16, which would allow a sector to request authorization to target allocated NE multispecies under this provision in FY 2013. That section of Amendment 16 specified that a sector operations plan should detail ''. . . a plan for operations or stopping once the ACEs of one or more species are taken.'' That paragraph concluded by stating, ''The plan must provide assurance that the sector would not exceed the ACEs allocated to it (either through landings or discards).'' Knowing that we intended to make this correction, sectors submitted requests to target allocated NE multispecies stocks. However, based on a review of Amendment 16, we believe that additional impacts analysis may be necessary, and intend to make this correction in a future action for FY 2014.

Prior to developing requests to fish with no ACE for a particular stock, we provided sectors with guidance that they must provide specific operational requirements (location, time, and gear), the species or stocks they intend to target, and demonstrate zero catch of any stock for which they do not have ACE (''limiting stock'') using their observer and ASM data from FY 2011. We received multiple requests from the GB Cod Fixed Gear Sector and NEFS 5 to fish under this provision.

We reviewed both vessel trip report (VTR) and observer/ASM data from FYs 2010 and 2011 for all requests to fish without ACE. These data indicated that very few sector trips from FYs 2010 and 2011 met the Amendment 16 standard of zero catch of the limiting stock outlined in the guidance we issued to sectors. However, the data for several of the requests indicate that catch of the limiting stock was less than 1 percent of the total catch. We proposed the provision that sectors could fish without ACE when targeting other species of which they have caught less than1 percent, provided the sector adheres to certain criteria. Unlike approved exemptions, which may be granted to any interested sector, these provisions to fish without ACE are sector-specific, and therefore are only approved for the sectors as shown in Table 4.

TABLE 4—REQUESTS TO FISH WITHOUT ACE PROPOSED FOR APPROVAL

Sector	Limiting stock	Stat area	Gear	Target stock	Time period
GB Cod Fixed Gear Sector	All ACE Stocks	526	Extra Large Mesh Gillnet	Monkfish, Dogfish, Winter Skate.	Year Round.
		537	Extra Large Mesh Gillnet	Monkfish	May–March.
				Winter Skate	Year Round.
			Large Mesh Gillnet	Winter Skate	Year Round.
NEFS 5	GB West Cod	611	Standard Otter Trawl	Summer Flounder	Oct–April
		613		Summer Flounder, Monkfish.	

For this provision, NEFS 5 proposed to require its participating vessels to submit trip start and trip end hails to the sector manager. If an NEFS 5 vessel encounters a limiting stock, the sector proposes requiring the vessel to land any amount of that limiting stock of legal sized fish, and prevent that vessel from taking a subsequent fishing trip until that specific ACE is accounted for through a transfer. Under this proposal, the NEFS 5 may charge the member additional fees for encountering the limiting stock. These sector requirements are approved for NEFS 5, as described, provided the sector meets additional requirements detailed below.

To aid in identifying these trips, a vessel in NEFS 5 and the Fixed Gear Sector that intends to use this provision on a sector trip is required to submit through its VMS a trip start hail with ''A2'' entered in the free text field to

identify the trip as one that will fish in an approved program to fish with no ACE for a given stock. This hail report will help us, as well as the sector manager, to identify a trip fishing under these provisions for monitoring purposes. Either sector may also require its participating vessels to submit a trip end hail, as detailed in the operations plan.

We proposed and are approving these provisions with the flexibility for the sectors to catch a *de minimis* amount of the limiting stock (up to 100 lb (45.4 kg)). The sector will be required to account for any amount of the limiting stock that is caught, and therefore would need to transfer-in additional ACE by the end of the FY to cover such an overage. Once a sector reaches the *de minimis* threshold of 100 lb (45.4 kg), the sector may transfer-in additional ACE and resume normal fishing activity, but may not attempt to fish under this provision for the remainder of the FY.

We are concerned about approving a provision to allow a sector to fish without ACE. We believe that 100-percent ASM coverage is necessary for accurate monitoring, given the very low 2013 quotas for some of the stocks. In addition, all sector trips that currently are not assigned an observer or monitor receive a calculated discard rate based on the total catch from that trip and actual discards from monitored trips in the same area with the same gear based on trips that were monitored. We cannot apply a calculated discard rate for the limiting stock or the sector could automatically exceed its ACE for the limiting stock on every trip. Requiring 100-percent monitoring ensures that the trip will have complete and accurate discard information. Therefore, we are approving this provision, provided an industry-funded monitor is deployed on 100 percent of these trips. Additional information on the requirements for 100-percent industry-funded monitoring programs for this provision is provided below under Additional Industry-Funded ASM.

Inshore GOM Restrictions

Several sectors (with the exception of the Northeast Coastal Communities Sector, NEFS 4, Port Clyde Community Groundfish Sector, and the Tri-State Sector) proposed a provision to limit and more accurately document a vessel's behavior when fishing in a part of the GOM Broad Stock Area (BSA) in what they consider to be the inshore portion of the GOM BSA, or the area to the west of 70°15′ W. long. We approve this provision, but note that a sector may elect to remove this provision in the final version of its operations plan. A trip that is carrying an observer or at-sea monitor remains free to fish in all areas, including the inshore GOM without restriction. As approved under the Inshore GOM Restriction provision, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip in the GOM west of 70°15′ W. long., the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip outside the GOM BSA, this provision prohibits the vessel from fishing west of 70°15′ W. long. in the GOM BSA. The approved provision includes a requirement for a vessel to declare whether or not it intends to fish in the inshore GOM area through the trip start hail. A vessel intending to utilize this provision on a sector trip is required to enter ''M3'' in the free text field of the trip start hail through VMS to identify the trip. This hail report will help the sector manager identify a trip fishing under this provision for monitoring purposes. We are providing sector managers with the ability to monitor this provision through the Sector Information Management Module (SIMM), a Web site where we currently provide roster, trip, discard, and observer information to sector managers. A sector vessel may use a federally funded NEFOP observer or at-sea monitor on these trips because we do not believe it will create bias in coverage or discard estimates, as fishing behavior is not expected to change as a result of this provision.

Additional Industry-Funded ASM

We are approving several exemptions that will require 100-percent ASM coverage funded by the industry. However, we are currently looking into possible ways to provide funding for these trips. Should funding be secured, we will alert the public of this and explain how money would be dispersed.

For any trip for which sectors are required to pay for a monitor, sectors will only be required to pay for the at-sea portion of the costs. Sectors will not be responsible to pay for data processing, monitoring gear, or training. Sectors may contract directly with any of the four monitoring providers approved to provide ASM services (A.I.S., Inc.; Atlantic Catch Data, Ltd.; East West Technical Services, LLC; and MRAG Americas) for any of the required exemptions or provisions.

Any sector interested in using an exemption requiring industry-funded ASM will be required to develop and submit a monitoring plan as part of its operation plan for approval by NMFS. Industry-funded ASM proposals should detail call-in procedures to the provider (timing, method, and information needed), selection protocols used to ensure that ASM coverage on standard sector trips will not be impacted, mandatory coverage requirements, refusal procedures, safety requirements, and trip start hail requirements. Many of these procedures will remain consistent with the guidance developed for an industry-funded monitoring program summarized in: *http://www.nero.noaa.gov/sfd/sectordocs/SectorOpsEAGuideFY2013.pdf.* If we determine the plan is sufficient, we will approve it along with the rest of the sector's operations plan. For FY 2013, any approved monitoring program will be included as an amendment to the sector's operations plan.

The proposed rule highlighted several concerns regarding impacts of 100-percent industry-funded monitoring to the reliability of and potential bias of discard estimates, our ability to achieve adequate NEFOP and ASM coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. Given these concerns, we will monitor the impacts of these exemptions, compliance with catch thresholds and other exemption requirements, as well as the associated industry-funded monitoring on stocks and required monitoring programs. Approved exemptions include a requirement for a vessel to declare whether or not it intends to use certain exemptions through the trip start hail. This hail report will help us, and the sector manager, identify a trip fishing under these exemptions for monitoring purposes. If necessary to mitigate negative impacts, we will revoke these exemptions during the FY after notifying sectors and the public, consistent with APA requirements.

Withdrawing a Sector Exemption In-Season

Previously, we have retained the right to revoke several exemptions in-season if a sector is not meeting certain requirements. To date, we have not used this authority, but include a procedure to revoke an exemption, if necessary, in this rulemaking. A sector exemption may be revoked, however, if we determine that it jeopardizes management measures, objectives, or rebuilding efforts; results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources; causes enforcement concerns; or if catch from trips utilizing the exemption cannot properly be monitored. At that time, consistent with APA

requirements, we will weigh the need to revoke the exemption as quickly as possible to prevent conservation or management objectives from being undermined, with the necessity or practicability of, or public interest in, a delay to receive comments.

Comments and Responses

Thirty-seven letters, each containing several comments, were submitted by several entities: Associated Fisheries of Maine, the Conservation Law Foundation (CLF), Oceana, Earthjustice, the Maine Division of Marine Resources (ME DMR), the Maine Coast Community Sector (MCCS), the Maine Coast Fishermen's Association (MCFA), the Massachusetts Division of Marine Fisheries (MA DMF), the New England Fishery Management Council (Council), Northeast Fishery Sector 5, the Northeast Seafood Coalition (NSC), the Northeast Sector Service Network (NESSN), the Pew Charitable Trusts (Pew), the Portland Fish Exchange, the Seacoast Science Center, the U.S. Coast Guard, the Union of Concerned Scientists and numerous individuals. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are responded to below.

General Sector Issues

Comment 1: The Portland Fish Exchange raised concern about the sectors, noting that they were promoted to increase stock abundance and ex-vessel prices, and that sectors have not been successful in accomplishing either.

Response: Since sectors were introduced to the NE multispecies FMP in Amendment 13, numerous stocks previously experiencing overfishing or that were overfished are no longer experiencing overfishing, nor are they overfished, including: SNE/MA yellowtail flounder, GB winter flounder, SNE winter flounder, white hake, and pollock. GOM winter flounder is no longer subject to overfishing. In addition, the biomass of CC/GOM Yellowtail Flounder, SNE/MA yellowtail flounder, GB winter flounder, SNE winter flounder, redfish, white hake, and Pollock have increased, though some to a minimal extent. At the conclusion of FYs 2010 and 2011, we evaluated the performance of both sectors and the common pool. The 2011 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2011-April 2012) (*http://www.nefsc.noaa.gov/publications/crd/crd1230/crd1230.pdf*) indicates that while landings have decreased from 69,774,688 lb (31,649,266 kg) to 61,721,659 lbs (27,996,474 kg), the average price per pound of NE multispecies increased from $1.21/lb in 2009 to $1.46/lb in 2011.

Comment 2: The MCCS commented that the proposed rule incorrectly named the sector as the ''Maine Coast Community Groundfish Sector'' instead of the Maine Coast Community Sector.

Response: Based on the comment received, we have corrected the name in this final rule.

Comment 3: MA DMF commented that we have approved sectors to operate as a de facto IFQ by allowing all sectors to assign each member the ACE that it brings to a sector. MA DMF also commented that it is unrealistic to expect sector vessels to consolidate operations onto fewer vessels.

Response: Amendment 16, developed by the Council and approved by NMFS, allows each sector to determine which vessels will actively fish and how best to harvest its allocation, including decisions regarding consolidation. Amendment 16 did not place restrictions on a sector's decision of how to allocate ACE to its members. Thus, each sector is free to determine how ACE will be assigned to its member vessels. For FY 2013, all sectors have elected to assign each member the ACE that it brings to a sector. The sector's allocation of ACE is not considered an IFQ since it is not a permanent allocation. A sector's ACE is a temporary, 1 yr amount of fish allocated to that sector based on the collective fishing history of the sector's members.

ASM Coverage Level for FY 2013

Comment 4: The Portland Fish Exchange contends that observer coverage should be provided by NMFS.

Response: Amendment 16, enacted in 2010, required that sectors develop an adequate industry-funded ASM program, beginning in FY 2012. Implementation of this requirement was intended to be phased in so that sectors would have time to develop monitoring systems, locate qualified vendors, and have their programs approved by NMFS (Amendment 16). During FYs 2010 and 2011, we implemented a federally-funded ASM program to collect the data required that would be sufficient to reliably estimate discards for ACEs and ACLs. In FY 2012, we again committed to paying for ASM in FY 2012 to help mitigate overall costs and negative impacts to the industry due to lower catch limits and informed the industry that it may not be possible for NMFS to continue funding the ASM program. Given the very low catch limits for FY 2013, in March 2012, we announced that we would pay for the required 14-percent level of ASM in FY 2013. NMFS has provided funding since the implementation of Amendment 16. However, we cannot guarantee that we will continue funding in future years, nor are we required to do so.

Comment 5: CLF, PEW, MA DMF, MCFA, and Oceana all submitted comments asserting that the proposed level of ASM for FY 2013 is too low for the reasons that follow. PEW and CLF commented that higher levels of observer coverage are essential to the future of this fishery and, that, although the proposed coverage may be sufficient to estimate discard rates on the observed trips, this level would not be adequate for quota management and assessment science. MA DMF broadly commented that catch share programs cannot be justified with such low coverage. MCFA highlighted that the proposed coverage rate may be sufficient for monitoring discards, but that higher coverage rates ensure all fishermen are held to the same standards of compliance with regulations. Oceana commented that the 30-percent CV is an inappropriate standard for ASM monitoring and that the proposed ASM coverage rate was insufficient to support ACE-level accountability measures (AM). Oceana also asserted that ACE-based AMs (sectors must cease fishing when an ACE is fully harvested) are the only AMs for allocated stocks, therefore requiring higher levels of ASM coverage. Oceana expressed concern that the 30 percent CV, when applied to catch, resulted in a range of estimates that could allow a sector to continue to fish after its ACE was exhausted.

Response: We have determined that 22 percent at-sea monitoring/observer coverage of sector trips is sufficient, to the extent practicable in light of Magnuson-Stevens Act requirements; to reliably estimate catch for purposes of monitoring sector ACEs and ACLs for groundfish stocks. This determination is based not only on the statistical sufficiency of the level of coverage as summarized in more detail at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf,* but also on the totality of how data and information is collected and analyzed including obligations on sectors to self-monitor and self-report which is linked to agency monitoring. For the most part, these commenters have generally asserted that this system and level of monitoring is not adequate without providing any specific justification or information to support their assertion.

Amendment 16 specified that ASM coverage levels should be less than 100 percent, which requires that the discard

portion of catch, and thus total catch, be an estimate. The level of observer coverage, ultimately, should provide confidence that the overall catch estimate is accurate enough to ensure that sector fishing activities are consistent with National Standard 1 requirements to prevent overfishing while achieving on a continuing basis optimum yield from each fishery. To that end, significant additional uncertainty buffers are established in the setting of ACLs that help make up for any lack of absolute precision and accuracy in estimating overall catch by sector vessels.

We rely on a number of data sources to monitor groundfish catch: Sector vessels are required to have an operational Vessel Monitoring System (VMS) and must use VMS to notify us when they are taking a groundfish trip; vessels must also submit vessel logbook reports (VTR), which are used to determine catch (landings and discards), gear and fishing area; depending upon their fishing activity, some vessels are also required to submit daily VMS catch reports to further refine catch by fishing area; dealers are required to report all purchases from groundfish vessels, which are used to determine landings; and sectors are required to submit sub-trip level catch and gear information weekly, or daily when certain catch thresholds (for FY 2013 the daily reporting threshold is 90 percent of any ACE) are reached. The detailed discard information provided by at-sea observers is critical for determining total catch (pounds, gear used, stock area). We conduct weekly reconciliation with sector-reported data, verifying that each sector and the agency have the same set of data to monitor catch and sector ACEs.

The Sector Manager Report submitted to us comprises three separate reports. The Sector Manager Detail Report provides information about each fishing trip down to the stock area. The Sector Manager Trip Issue Report provides information about any enforcement or reporting compliance issues that arose during the fishing week. The ACE Status Report provides the means for sector managers to report their ACE status calculations. This allows us to cross-check totals, as stipulated in Amendment 16. The Daily ACE Status Report provides the means for sector managers to report their ACE status calculations on a daily basis if a threshold has been reached in the current fishing year. Sector reports and reconciliation have led to the highest level of VTR compliance ever recorded in the Northeast multispecies fishery. It is in the best interest of each sector to accurately report the required information not only to foster effective ACE monitoring, but because sector members may be held jointly and severally liable for violations. Sectors have demonstrated their willingness to self-report enforcement or reporting compliance issues (10 incidents reported in FY 2010, 18 in FY 2011) and have established mechanisms for investigating, adjudicating, and punishing member violations in addition to enforcement actions that may be taken by us.

Oceana specifically expressed concern that the 30 percent CV, when applied to catch, resulted in a range of estimates that could allow a sector to continue to fish after its ACE was exhausted. However, the 30 percent CV standard is not applied to catch, it is applied to discard estimates. Catch is the sum of landings and discards, and landings are derived from dealer purchase reports. The CV analysis is conducted to evaluate the calculation of discards, which are typically less than 10 percent of the overall catch of the allocated groundfish stocks, and in FY 2011 were less than 5 percent of the catch for most allocated stocks (while discards were a higher percentage of total catch for GOM yellowtail flounder, GB East cod, and American plaice, the total catch of those stocks were less than 90 percent of the sub-ACLs and the CVs for those stocks ranged from 4.4 to 15.4). The discard calculations include actual discard poundage reported by at-sea observers, and discards estimated by applying the stratum discard rate to the pounds kept on an unobserved trip. NOAA Fisheries has further examined the 256 sector ACE level catch figures (16 fishing sectors *16 ACE allocations) in comparison to the CV30 standard for FY 2011. This examination reveals that for 207 of the 256 ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent was less than 1 percent. For 43 of the remaining ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent ranged from 1–9.9 percent. There were 6 ACE allocations for which the percent of discard pounds with a CV greater than 30 percent ranged from 10–66 percent. Based on this analysis, we conclude that we the monitoring program for sector ACE allocations is reliable.

Our Fisheries Sampling Branch (FSB) at the NEFSC collects, maintains, and distributes data from fishing trips that carry at-sea observers. FSB manages two separate but related programs: The NEFOP and the ASM program. Although each program is tailored to meet specific monitoring objectives, the programs function similarly. Priorities for the NEFOP observer program are determined by national priorities (e.g., endangered or protected species), fishery management priorities, and scientific priorities related to stock assessments. NEFOP observers collect the same fishing vessel catch information, but with an additional focus on biological sampling of catch, including any incidental take of a marine mammal, seabird, or sea turtle. The NEFOP program's resources are finite, and the allocation of NEFOP coverage to fishing trips is guided by program priorities that include those determined by using a SBRM that identifies relative fleet contribution to discards. The ASM program was implemented in FY 2010 to support the NE multispecies sector management program, and collects data to verify fishing vessel catch (landings and discards), by species, gear type and area, for the purpose of monitoring sector catch.

In developing Amendment 16, the Council anticipated that NEFOP might not have sufficient resources to fund sector catch monitoring, so Amendment 16 specified that starting in FY 2012 sectors would be required to develop an industry-funded ASM program to monitor sector catch. The NEFOP program provides at-sea observers, and the coverage provided to sectors by that program partially satisfies the sector-specific ASM provision. Collectively, the at-sea coverage provided by the ASM and NEFOP programs is providing more data for quota management and assessment science than was available to NMFS prior to implementation of Amendment 16.

The agency has determined the level of monitoring coverage that is necessary to accurately monitor sector operations in the context of the national standards and other requirements of the MSA. We have determined that the appropriate level of observer coverage should be set at the level that meets the 30-percent CV requirement (at a minimum) at the overall stock level for all sectors and gears combined, to reliably estimate catch for purposes of monitoring ACEs and ACLs. This level of coverage minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to monitor annual catch levels.

This interpretation is justified in light of the requirement for conservation and management measures to be consistent with all national standards. Specifically, National Standards 2, 7, and 8, which speak, respectively, to the need to use the best scientific information available; the need to minimize costs and avoid

unnecessary duplication, where practicable; and the need to take into account impacts on fishing communities and minimize adverse economic impacts, to the extent practicable. We have conducted analyses, and considered both precision and accuracy issues in determining the appropriate level of coverage that minimizes the cost burden to sectors and NMFS, while still providing a reliable estimate of overall catch. As stated previously, we have published a more detailed summary of the supporting analyses, and an explanation and justification supporting our determination that an at-sea coverage rate of 22 percent (14 percent ASM + 8 percent NEFOP). Summary tables of the data used in the analyses were also posted on our Web site. A table of information by stock, gear, and sector was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata2.html.* A table of information that can be sorted by stock and gear (without sector affiliation) was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata.html.*

Oceana's claim that ACE-level AMs are the only AMs that apply to allocated stocks is inaccurate. Amendment 16 included many AMs for various portions of the groundfish fishery, including specific AMs to address the possibility that sector catches might at some point exceed their ACEs. Among the AM's instituted for sectors are: (1) Catch allocated to each sector is based on the stock ACL established by the Council. The ACL takes into account biological and management uncertainty to reduce the risk of overfishing. (2) Sectors are required to stop groundfish fishing when they are projected to have caught their allocation for any groundfish stock. (3) Reporting requirements are implemented to ensure that monitoring of sector catches is timely and accurate. (4) Sectors are provided opportunities to balance catches with their allocation through the trading of ACEs between sectors. (5) If a sector exceeds its allocation in a given year, and cannot balance its catch and allocation through ACE trading, then its allocation in the following year is reduced by the overage.

Sector ACEs are only one of several sub-allocations of each allocated stock's ACL. In addition to the sector-specific AMs, there are additional AMs that apply to each allocated stock's ACL and AMs that apply to other sub-ACLs and sub-components of each stock. A ''hard TAC'' backstop was adopted for the common pool, under which the fishery would be suspended upon reaching the year's sub-ACL for a stock. For the recreational fishery, AMs include adjustments to seasons, adjustments to minimum fish sizes, or adjustments to bag limits. Amendment 16 specifically contemplated the roles of AMs at the ACL, sub-ACL, and sub-component level, noting that with more than one sub-component, and with ACLs set lower than the ABC (due to scientific and management buffers), it is possible that an overage by one component and not the others may not lead to a depressed stock size that requires adjusting ACLs. Accordingly, it sets up an entire process of evaluating any ACL overage to determine if an AM is necessary or sufficient to account for the overage and the current biological condition of the stock. This exists above and beyond the AMs set for sectors which are designed to engender responsibility and accountability in the sector system. The overall context is to allow adjustments (AMs) at the sub-component level so that components not responsible for any overage at the ACL level are not subject to reductions in their sub-ACL and resultant changes in fishing opportunities.

Oceana's concern about monitoring at the ACE level needs to be distinguished from the determination of ASM coverage requirements. The sector monitoring program described previously provides reliable information for ACE monitoring.

Comment 6: MA DMF urged that we base ASM coverage rates on a non-random stratification of the fleet based on sub-allocations made available to individual fishermen by their sectors and the fishing power of individual fishing vessels. MA DMF contended this is a necessary measure to counter the impact of not having a high ASM coverage rate.

Response: ASM selections are made randomly to achieve the target coverage rate we have determined will meet the CV standard and effectively monitor catch at the ACL level. The pre-trip notification system (PTNS) used by NEFOP to make coverage selections does not stratify trips, but makes random selections for monitor assignment for each sector. Random selection is used because sector behavior and allocations can change at any time during a fishing year. The CV measures the precision of the calculated discards, and varies depending on the consistency of individual trip activity in comparison to the average trip activity within a stratum (i.e., sector, area fished, and gear type used). For example, all trips by members of Northeast Fishery Sector III in statistical area 521 using 6.5-inch sink gillnets are in the same stratum. This is consistent with the Council's proposed Framework 48, which specifies that the CV should be applied at the stock level.

Establishing individual ASM coverage rates for each sector vessel would greatly complicate the deployment of observers on appropriate trips. As described in more detail in Appendix A at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf,* all at-sea coverage selections are made by NEFOP to ensure that trip selection is random within a sector, and that the ASM coverage is integrated into overall coverage level needs. Requiring the ASM selection process to achieve different coverage rates for each individual vessel is not practical. It would add a substantial amount of complexity to the program, and establishing such a complex system would require substantial program changes with associated costs, but likely only marginal improvement in our estimation of catch at the ACL level. For example, for this approach to work, it would require coverage allocations to be specified for each vessel as a starting point for distributing coverage. This approach would also require that individual vessels be limited to fishing specified allocations in order to allow for ASM selection based on the allocation. Without fixed allocations to vessels, it would be impossible to base an individual vessel's coverage rate on the vessel's available sub-allocation from the sector because ACE leasing between sectors and share trading among a sector's vessels occur throughout the year. This approach would require fundamental modifications to the more flexible system in place. These modifications would be inconsistent with the sector system modified by Amendment 16 and beyond the scope of this action. The sampling strata would have to be based on knowledge of each sector's allotment of catch to individual vessels, and would establish a monitoring program based on landing capacity. This would require ASM levels to be specified after the sector membership rosters are final, and after the sector operating plans are approved. Such an approach would have to assume that the relative performance level of each individual vessel remained constant provided the vessel remained in a specified sector. Such a program would represent a major change to the current sector program, and could not be accomplished at this time.

Comment 7: The Council commented in support of using a stock-specific CV rate across all sectors (i.e., at the stock level rather than the ACE level) as

proposed in FW 48. The application of the CV rate across sectors is explained in more detail in the response to comment 8.

Response: We agree that the correct standard for determining precision of catch estimates from ASM is at the stock level.

Comment 8: The Council expressed concern that the 22-percent coverage rate for FY 2013 is based on achieving the 30-percent CV for GB winter flounder, and that the coverage rate is therefore 10 percentage points higher than necessary to achieve the CV standard for all other stocks. The Council commented that there are several sectors with little to no catch of GB winter flounder, which made that stock inappropriate as the basis for determining those sectors' coverage rate.

Response: The required coverage rate is set for each year based on analyses using the most recent available data. We have interpreted the requirement to accurately monitor sector operations in the context of the national standards and other requirements of the MSA, as explained in the response to Comment 5. We have, determined that the appropriate level of observer coverage should be set at the level that meets the CV requirement at the overall stock level, and also minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to effectively monitor annual catch levels. GB winter flounder is the stock that has the highest variability based on FY 2011 catch. However, in FY 2010, a review of the data indicated (see Table 1A in Summary document) that GB winter flounder would have required a coverage level of 9 percent to achieve a CV of 30. Given only two fishing years of data to determine the level of ASM coverage, NMFS concludes it is premature to assume these values are determinative. Instead, data was used as an indication that variability is likely to be high for GB winter flounder or some other stock(s). A coverage rate of 22 percent of trips is intended to account for this variability in the fishery and ensure that GB winter flounder (as well as all other stocks) meets the CV standard.

Comment 9: CLF and PEW commented that illegal discarding and use of small mesh are well known in New England. Oceana commented that they agree with the statements by the Council's NE multispecies Plan Development Team that low ACLs increase incentives to illegally discard fish, potentially resulting in long-term effects to the fishery larger than the cost of adequate ASM.

Response: There is no evidence to support the assertion that illegal discarding and use of small mesh are currently widespread in the groundfish fishery. Both practices have been documented by sectors and the enforcement agents, but we believe that they are not the norm, due, in large part, to the requirements of the sector system and to the efforts of enforcement agents. The Sector Manager Report submitted to us comprises three separate reports, including the Sector Manager Trip Issue Report that provides information about any enforcement or reporting compliance issues that arose during the fishing week. It is in the best interest of each sector to accurately report the required information not only to foster effective ACE monitoring, but because sector members may be held jointly and severally liable for violations. Sectors have demonstrated their willingness to self-report enforcement or reporting compliance issues (10 incidents reported in FY 2010, 18 in FY 2011, including discarding violations) and have established mechanisms for investigating, adjudicating, and punishing member violations in addition to enforcement action taken by us.

ASM Costs

Comment 10: The Council commented that we should compromise between administering an uncomplicated program for ASM selection and reducing industry-wide ASM costs. MA DMF commented that balancing monitoring levels with costs was a conundrum and stated that industry cannot afford to pay for monitoring due to low quotas going into effect. CLF and Pew stated that monitoring should be accepted as a cost of doing business for those fishing on a public resource. The Council commented that setting the coverage rate based on meeting the CV standard for GB winter flounder removes any incentive for sectors to reduce the variability of their discards to reduce observer costs because it would not necessarily impact their future coverage rates. The Council suggested a compromise approach using one coverage rate for sectors catching substantial amounts of GB winter flounder and a different coverage rate for other sectors.

Response: We agree that, under Magnuson-Stevens Act requirements, we must balance administration of the ASM program and reducing overall costs and that the level of ASM coverage adopted for this year in combination with the overall sector program requirements does just that. Regulations specify that ASM costs are the responsibility of sectors, beginning in FY 2012. We interpret this to mean that sectors will be responsible to pay for the at-sea portions of the ASM costs. For FY 2012, we secured funding to pay for all ASM costs. Because of the Secretary's disaster declaration in the groundfish fishery we committed to covering these costs again in FY 2013, knowing that it would be difficult for the industry to pay those costs due to the low quotas set for many of the NE multispecies stocks. As stated in Comment 5, we have determined that the appropriate level of observer coverage should be set at the level that meets the CV requirement at the overall stock level, and also minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to monitor annual catch levels. The response also notes that, given only two years of data, NMFS does not view the FY 2011 variability of GB winter flounder as predictive, and believes it would be inappropriate to tailor the coverage requirements to address that one data point, rather than the fishery as a whole. As more data and information become available each year, we can further hone the appropriate level of ASM coverage that best balances the cost and need of such coverage.

Comment 11: CLF and Pew suggested that electronic monitoring (EM) and full retention of fish could provide more complete information on mortality and bycatch while reducing industry costs.

Response: Along with other monitoring systems such as observers, at-sea monitors, vessel trip reports, biological sampling and dealer reports, electronic monitoring (EM) technologies hold promise as additional data collection tools. When supplemented by other data collection methods, accountability practices, business rules, and on-board practices, EM may be an important means of supporting full catch accounting. We encourage and endorse the use of EM, where and when appropriate, in the Northeast Region. Currently, we are in the third phase of a pilot study researching the possible role of EM in the Northeast groundfish fishery. As we develop and implement EM for monitoring fisheries in the Northeast, we have identified two models that hold promise for effective use in Northeast fisheries: 1. Full retention of catch with EM used to ensure compliance, and 2. EM as a means of validation of the vessel trip report discard data in place of using calculated discards.

The Council would need to assess the practical and biological issues associated with this and may need to revise its fishery management plan. It is

important to note that requiring vessels to retain all fish would require full consideration of a number of issues related to the retention of non-groundfish species, and related to the monitoring and disposition of fish landed under such a program. It is also unknown at this point whether EM would be more cost effective than monitors.

Comment 12: In their comments Oceana made a number of requests for action to address their concerns about the ASM coverage level for FY 2013 and the process for determining the appropriate level. Their requests were that we:

1. Disclose the data required to be published under ASM settlement agreement.
2. Have the Council's Scientific and Statistical Committee (SSC) review the observer coverage analyses.
3. Extend the comment period until the data are disclosed and SSC review is published.
4. Analyze how much coverage is necessary to meet the 30-percent CV for every ACE.
5. Analyze how much discard rates would need to increase on unobserved trips to exceed an ACE.
6. Analyze how much discard rates would need to increase on unobserved trips to avoid exceeding an ACL with a 0-percent probability of an overage.
7. Repropose ASM coverage rates based on the requested analyses.

Response: Our response to comment 5 refers to summary tables that were included in the ''Summary of Analyses Conducted to determine at-Sea Monitoring Requirements for Multispecies Sectors FY 2013.'' The initial summary tables were posted on March 13, 2013, and additional summary tables were posted on April 12, 2013, and included the data used in the analyses, as agreed in the settlement agreement between Oceana and NMFS. A table of information by stock, gear, and sector was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata2.html.* A table of information by stock and gear (without sector affiliation) was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata.html.* These data sets have been truncated to protect confidentiality, as required by the Magnuson-Stevens Act.

Amendment 16 requires us to set sufficient coverage levels and, as required, we have undertaken analyses and made a determination of the coverage level. Through the proposed rule for this action we announced our determination and sought comment. In accordance with the 2012 ASM settlement agreement we have posted a detailed summary of our analyses, and the data used, for the public. The Council commented on the proposed rule, including proposed ASM coverage levels, and we respond to those comments in this interim final rule.

As discussed in the preamble of this rule, we will continue to accept comments on the final rule about the required ASM coverage levels, and supporting analyses and data.

Oceana's comments on the analyses of bias (numbers 4 and 5 in Comment 12) are based on the incorrect premise that an examination of bias must be made at the sector level. The Summary Document posted online presents our current analyses of bias. The analyses concluded that while there are indicators of observer bias for the overall fishery, the results are not specific enough to support any quantitative adjustments at the stock ACL level. The sensitivity analyses indicates, however, that it is unlikely that observer bias will cause ''true'' catch to exceed stock ACLs.

By extension, this is also likely true for monitoring most of the ACE poundage because ACL accounting is a compilation of ACE accounting.

Oceana's request that we analyze how much discard rates would need to increase on unobserved trips to avoid exceeding an ACL with a 0-percent probability of an overage is based on a misunderstanding of the statistical method employed. All measurements of catch will have some error. AMs are triggered when the estimate exceeds the allocation. Accordingly, a 50-percent measure of probability of an overage is appropriate as it represents a neutral risk of over-estimating or underestimating the catch. In our bias analyses we used an exceptionally risk-averse 5-percent probability that takes into account the error estimate and ensures that the estimate is not wrong about ACL overages more than 5 percent of the time. The notion of risk in estimates underlies the system of OFLs, ABCs, ACLs and ACEs set up in the Magnuson-Stevens Act and the NE multispecies FMP. Amendment 16 includes a layered approach to AMs at different levels, including a requirement that sectors cease fishing when they exhaust their ACE. The monitoring system is also layered, including not only ASM to estimate discards on unobserved trips, but sector buffers and progressive reporting requirements that increase in frequency as sectors approach end of their allocation. Further, Amendment 16 specified that sector vessels would have less than 100 percent ASM coverage, which requires that catch information be an estimate. By its nature, using an estimate of catch precludes Oceana's assertion that the tolerance for the potential of an ACL or ACE overage should be zero. Accordingly, we will not be conducting the additional analyses requested by Oceana, and therefore will not repropose ASM coverage requirements based on those requested analyses.

Comment 13: Oceana commented that the proposed rule did not discuss timeliness of catch data and that the proposed ASM coverage levels did not include standards for temporal distributions of observers and at-sea monitors that will distribute coverage throughout the fishing year in a manner sufficient to monitor ACEs in real time.

Response: Monitoring data can be grouped into three main forms of data: electronic, paper, and biological. Each form of data has a submission time as defined in contracts with monitoring providers. Both at-sea monitors and observers adhere to the same data submission times related to catch monitoring. The electronic form of data is used for the weekly sector catch report and must be submitted within 48 hours of landing. Electronic data are reported through a secure Web site and include trip statistics such as dates and times, gear type, and haul by haul information on catch (location, species, weight, and fish disposition). The paper logs must be received within 5 calendar days. The paper logs have more detailed information that supports the calculations and sampling methods. The electronic data are verified, including plotting tow locations, comparing gear types to past trips, and testing general ranges of species complexes and weights for accuracy, and species identification photographs are confirmed. The electronic data are verified by a trained editor and loaded to an Oracle database that is shared with sector managers and vessel owners within 24 hours of receiving it. Once the paper logs are received, a second-level data quality check is performed, comparing the paper data to the electronic data in the database. Biological specimens (collected for tagging studies, to support trainings, or to validate species identifications), must be received within 5 calendar days. A more detailed discussion of data timeliness is provided in Appendix F at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.*

Sectors are required to report their catch, at the sub-trip level, on a weekly basis. However, as sectors approach the end of their ACE (90 percent of any ACE

in FY 2013) the reporting requirement becomes daily. This ensures that NMFS and the sectors have more timely data when it is most necessary.

The PTNS system which selects trips for coverage by at-sea monitors and observers continually selects trips throughout the year on a random basis to achieve the target coverage. The PTNS system uses a systematic sampling design and continuous updating of coverage rates to prevent cost overruns. This balances the available amount of monitoring sea-days (based on budget) throughout the year as we achieve the target coverage rate. This ensures that coverage occurs throughout the year in a fair and equitable way that is distributed in a statistically random manner among all trips to assure coverage is representative of fishing activities by all sector vessels, and by all operations through the fishing year, as required by the regulations at 648.87(b)(1)(v)(B)(*3*).

Sector ASM Proposals

Comment 14: Pew, CLF, MCFA, and MCCS do not support the use of a fixed discard rate method in place of an ASM program. Pew and CLF argued that the fixed discard rate method does not comply with the 14-percent coverage rate requirement. MCFA and MCCS noted that the data collected by monitors contributes to stock assessment science, and also noted the valuable role of observers beyond discard accounting.

Response: We agree with the concerns raised above. Because we have pledged to pay for the required 14-percent coverage in FY 2013, all sector-proposed ASM plans have been removed from final operations plan, and are not considered further in this final rule. Several data sources are integral to monitoring the NE multispecies fishery, including dealer data, self-reported vessel trip reports, and observer/monitor data. Observers and at-sea monitors also collect important information, on location, about target species and protected species interactions.

Industry-Funded Monitoring Requirements for Exemptions

Comment 15: Industry, the Council, ME DMR, the Portland Fish Exchange, and one sector submitted comments pertaining to the proposed requirement for industry-funded monitoring on 100 percent of trips using certain exemptions or provisions (for targeting redfish with small mesh, fishing in the SNE/MA winter flounder stock area with winter flounder onboard, and fishing without ACE). All stated that industry cannot afford to pay for monitoring in FY 2013. Several speculated that requiring industry to pay for monitoring will render these exemptions useless, and may remove the advantage to participate in sectors.

Response: As discussed in greater detail in the preamble to the proposed rule, we have several concerns regarding the reliability of discard estimates and the potential effects of any bias on observed trips, our ability to achieve required coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. Given the low ACLs proposed for FY 2013, we acknowledge that the decision to join a sector or remain in the common pool will be a difficult decision for a vessel owner. We also understand that this industry-funded requirement may limit the usage of these exemptions. For these reasons, we are actively exploring ways to fund monitoring costs for these exemptions, and will provide additional information as it becomes available.

Comment 16: Industry, the Council, and ME DMR commented we should have informed the Council that we were considering 100-percent industry-funded monitoring for these exemptions and explained our rationale for proposing this prior to the proposed rule being published. The Council commented that they did not recommend 100-percent monitoring to be a condition of access to closed areas. They also commented that the coverage rate analysis indicates that 22-percent coverage is sufficient for monitoring ACLs and, therefore, additional coverage for certain exemptions may not be necessary.

Response: Sectors first proposed that several of these approved exemptions (for targeting redfish with small mesh and fishing in the SNE/MA winter flounder stock area with winter flounder onboard) be allowed only when a NMFS-funded monitor is assigned to the trip. During internal review and discussion of these exemptions, we determined that current funding levels would not allow us to support NMFS-funded monitoring of 100-percent coverage of trips under these exemptions; however, we agreed to provide the opportunity for industry to use these exemptions, provided industry would pay for at-sea costs. Although our monitoring coverage analysis indicates that 22-percent coverage is sufficient to monitor discards for most sector trips; we believe that certain exemptions will require additional monitoring. The redfish exemption includes catch thresholds and the use of smaller mesh nets, which requires monitoring to ensure that catch thresholds are not exceeded. Fishing with no ACE requires monitoring because calculated discard rates for these strata cannot be assigned to such trips without causing the sector to have discards associated with the limiting stock. Requiring a monitor on trips in the SNE/MA winter flounder stock area with winter flounder onboard will help to ensure that catch of winter flounder has not come from the SNE/MA winter flounder stock area. We believe that these coverage requirements are necessary to monitor the use and effectiveness of these exemptions in FY 2013. Based on the information acquired in FY 2013, we will reconsider the need for additional monitoring in future years.

Comment 17: We received several comments seeking alterations to, or revocation of, exemptions requiring 100-percent industry-funded monitoring. CLF and Pew recommended disapproval of exemptions that may compromise monitoring. ME DMR stated that we should work with sectors to develop triggers to recalibrate coverage.

Response: We plan to monitor these exemptions and have proposed catch triggers for targeted redfish trips and fishing without ACE that, if exceeded, may result in the removal of that exemption for a given sector during the FY. We will continue to assess our ability to adequately cover standard sector trips with monitors and ensure that the 100-percent monitoring requirement for exemptions does not impact coverage for standard sector trips. We intend to notify and work collaboratively with monitoring providers and sectors in advance of revoking any of these exemptions, to develop mutually agreeable solutions to any problems encountered.

Comment 18: One sector agreed with our concern that our proposal to require 100-percent industry-funded monitoring coverage of certain exemptions could limit monitor availability. If federally funded monitors were approved for use on exemption trips, this sector also questioned how assigning a federally funded observer would reduce the number of observers available to cover standard sector trips.

Response: We expressed concern in the proposed rule that using NMFS-funded monitors or observers on exemption trips could reduce the number of observers or monitors available to cover standard sector trips, specifically that: (1) Vessels would call into PTNS indicating their intent to use an exemption and, once given a waiver from having to carry an observer or

monitor, the vessel would not take a trip, but wait to be selected for an observer or monitor which could require divert resources away from standard sector trips for these exemption trips, effectively undermining random selection; and (2) that vessels would call into PTNS to use an exemption, be selected for NMFS-funded coverage, affecting the number of observers and monitors available to cover standard sector trips, given that there is a limited pool of observers and monitors based on available funding to meet the 22-percent coverage level. Based on these concerns, we proposed requiring sectors to develop an industry-funded ASM program for use in these exemptions.

Sector Exemptions

Comment 19: We received comments from one industry member supporting the extension of approved exemptions to sectors for FY 2013. The U.S. Coast Guard commented that approved exemptions should be granted to all sectors, to facilitate enforcement.

Response: During FYs 2011 and 2012, we analyzed, proposed, and approved each sector exemption so that it would be available for all sectors to request, or modify inseason, without requiring additional analysis. In FY 2013, each sector exemption was proposed and analyzed as if all sectors were using the exemption. Therefore, all sectors may elect any approved exemption in its final operations plan, and it is up to the sector's discretion to determine which exemptions will most benefit its members. However, for FY 2013, two sectors proposed an operations plan provision to fish when the ACE for an allocated stock had been reached. Because each sector may have different fishing practices that may influence our ability to approve or disapprove these provisions (i.e., practices that meet the NMFS-imposed limiting stock 1-percent bycatch threshold), our analysis focused on each individual sector's catch history. Therefore, provisions to fish without ACE will only be granted to the requesting sectors, which meet the 1-percent threshold.

Comment 20: ME DMR commented that gear restrictions in the CA II SAPs are unnecessary because a sector's activities are controlled by its ACE. ME DMR also stated its opposition to any further efforts that restrict efficiency and flexibility (i.e., imposing modifications from sector requests or disapproving an exemption). MA DMF urged caution in the approval of many of the exemptions, stating that the removal of some effort controls are unwise, counterproductive, and provide uneven distribution of benefits between fishermen.

Response: We agree that many gear restrictions may no longer be necessary in a catch-limit based system. During FYs 2010 through 2012, sectors were granted exemptions from numerous gear requirements, including seasonal closures for gillnet gear, gear hauling requirements, net limits, and minimum mesh size requirements. We support granting additional flexibility to sectors through exemptions, provided that these exemptions do not negatively impact protected species, habitat, spawning aggregations of fish, or other stocks. For FY 2013, we are again approving a number of exemptions from gear restrictions, given that a sector's activity is limited by its allocated quota. We believe the approved exemptions and provisions will provide sectors with needed flexibility in a year when some quotas may be dramatically reduced.

The 2011 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2011–April 2012) (*http://www.nefsc.noaa.gov/publications/crd/crd1230/crd1230.pdf*) supports the assertion that benefits have been distributed unevenly but it does not attribute the uneveneness to exemptions. Most NE states experienced increases in nominal revenues from the landings of all species in 2011 from 2010, and were at a 3-yr high in Massachusetts, New Jersey, New York, and Rhode Island. However, for several states (Connecticut and Maine), revenue from all species declined between 2010 and 2011. While the number of groundfish trips declined for all vessel size categories over a 3-yr period, the largest decline occurred in the 30-ft (9.1-m) to 50-ft (15.2-m) vessel length class. The smallest decline occurred in the largest vessel size class (over 75 ft (22.9 m)). There is no clear connection between a particular exemption and these effects. Further, it is unclear if these changes result from exemptions granted to sector vessels, changes in ACLs, or some other reason(s).

Comment 21: NESSN and one sector supported the approval of all previously approved exemptions for FY 2013.

Response: Most previously approved exemptions have been approved again in FY 2013. Many of these exemptions provide flexibility by eliminating effort controls, while other exemptions will help to reduce costs or allow a vessel to target healthy NE multispecies stocks. We believe these approved exemptions are warranted, given the fact that sectors are allocated an ACE, which will constrain their impacts. One exemption that was previously approved was disapproved for FY 2013. The GOM sink gillnet mesh exemption was approved in previous years to encourage vessels to target GOM haddock, a relatively healthy stock. However, given that GOM haddock is experiencing overfishing and approaching an overfished status, this exemption is not justifiable, and has been disapproved.

Comment 22: Several individuals submitted comments pertaining to the development of exemptions. One sector noted industry's time and effort spent in the development of exemptions that would afford more flexibility, allow sectors to more fully utilize their ACEs, and mitigate low catch limits, and raised concern with NMFS's modifications to these requests. The Council also claimed that NMFS's modifications to these exemptions have wasted the time taken to develop these exemptions by the Council, public, and NMFS. NESSN commented that it was worried that we are applying a ''one size fits all'' approach to exemption approval. NESSN also recommended that we should communicate exemption concerns with the sectors to find reasonable, workable alternatives prior to publishing a proposed rule.

Response: We acknowledge each sector's efforts in the development of operations plans, weekly reports, and summation of the sectors activity in the sector annual report. Through the sector operations plan review process, we have attempted to establish a collaborative process. Each summer, we encourage sectors to submit exemptions for initial NMFS review and comment, and we attempt to provide sectors with feedback on regulation citations and additional issues to address. Sectors submit operations plans, including exemptions, on September 1, and we provide sectors with comprehensive comments. Once reviewed, we provide feedback to sectors on those plans and exemption requests, and allow time for sectors to address our concerns. We meet with/Regional Office and NEFSC staff to discuss ideas and, if there is significant concern with a proposed exemption, we collaborate to find a way we could approve such exemption.

Comment 23: DMR, the Portland Fish Exchange, NSC, and a number of industry members raised concern that we did not involve the Council in the development of the proposed rule, in particular that we are changing Council recommendations for exemptions, and that exemption concerns should have been addressed and evaluated through the Council process.

Response: Amendment 16 established the current process for a sector to submit a preliminary operations plan to the Council for approval to form as a sector; and a final operations plan,

including exemption requests and membership information to NMFS for approval to operate. Our process to approve a sector to operate and to allocate ACE falls outside of the Council process. We have specifically sought the input or clarification of the Council on two exemptions, and will continue to do so as necessary. In addition, we have worked with sectors in the development process of exemptions (see response to Comment 22), and have provided feedback through the review of the operations plans.

6.5-inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets To Target Redfish in the GOM

Comment 24: We received numerous comments regarding the requirements associated with the redfish exemption, specifically the requirement for 100-percent industry-funded monitoring. Individual industry members and one sector contended that sector vessels should have the option to take a federally funded observer, and that changing this requirement from how it was approved for FY 2012 came too late in the year for vessels to plan for FY 2013. Industry and ME DMR commented that it is inappropriate to make alterations from the Council's original request for this exemption. The Council noted its opposition to industry funding of all observer coverage for this exemption.

Response: As described in the proposed rule, and explained in comments in this preamble, we cannot provide NMFS-funded monitors for use on exemption trips requiring 100-percent monitoring. Use of NMFS-funded monitors was allowed in the redfish exemption for FY 2012 in part because it was a short-term exemption; however, after additional consideration by NMFS following the publication of the FY 2012 proposed rule about its use over an entire fishing year in combination with other exemptions requiring additional monitoring, we became concerned about the reliability of and potential bias of discard estimates, our ability to achieve required coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. While it was too late to withdraw this provision in the final rule for FY 2012, it was necessary to modify this provision for FY 2013. Should we receive additional money to fund monitors, we will promptly alert the public of this and explain how money would be dispersed.

Comment 25: Industry and ME DMR questioned the two NMFS-proposed threshold requirements that will be used to monitor this exemption.

Response: The final rule implementing the 4.5-in (11.4-cm) redfish exemption in FY 2012 included two performance requirements to ensure that the exemption does not negatively impact fish stocks: A monthly catch total of NE multispecies (including landings and discards) that must be comprised of at least 80 percent redfish; and a requirement that total NE multispecies discards (including redfish discards), may not exceed 5 percent of all NE multispecies caught monthly with small-mesh nets. These thresholds were specified to help ensure that vessel do not target other stocks, to help mitigate catch of sub-legal NE multispecies (including redfish) and were determined to be consistent with catch information from REDNET research trips. We believe that these requirements are necessary to ensure that vessels target redfish while using this small-mesh exemption. In future years, we could consider altering these thresholds, based on the data collected from trips using this exemption in FY 2012 and FY 2013.

Comment 26: We received several comments in opposition to the redfish exemption. CLF, Earthjustice, Pew, and one sector raised concern regarding the life history of redfish, noting that the species is slow growing and long lived, making it susceptible to overharvest. CLF, Earthjustice, and Pew raised concern about the allowance of small mesh nets and the impacts on juvenile NE multispecies, which could impact rebuilding. Earthjustice opposed granting the exemption, noting that approval of 4.5-inch (11.4-cm) mesh is a substantial deviation from the current minimum mesh size.

Response: We understand the concerns raised by these groups, and have therefore set monthly thresholds to ensure that vessels using small mesh do not adversely impact the redfish stock, or other groundfish stocks. We will monitor these thresholds on a monthly basis, and will revoke the exemption inseason, if necessary to sustain the FMPs fishing mortality objectives. We agree that the use of 4.5-in (11.4-cm) mesh is a substantial deviation from the current minimum mesh sizes; however, we believe that the additional restrictive measures that the vessel must adhere to when directing on redfish with small mesh, will help address these concerns.

Limits on the Number of Gillnets Imposed on Day Gillnet Vessels

Comment 27: We received several comments from industry, two sectors, the Council, and ME DMR supporting the exemption from the limits on the number of gillnets imposed on Day gillnet vessels, arguing that harbor porpoise interactions have decreased since the approval of this exemption, that it is more appropriate to allow sectors to determine if the use of selective gear is necessary, and that effort controls are not necessary in a quota-based fishery. One sector also noted that extra nets allowed by this exemption provides the flexibility to experiment with mesh-size and placement to avoid limiting stocks, while still maintaining nets to fish normally.

Response: In the proposed rule, we raised concern about the potential for impacts from this exemption on protected species. We have since confirmed public comment indicating that the number of harbor porpoise interactions has decreased recently, and approved the exemption.

Comment 28: CLF, Earthjustice, MA DMF, Pew, and the Union of Concerned Scientists raised concerns about the continued approval of the exemption from the limit on the number of gillnets imposed on Day gillnet vessels. The environmental organizations were specifically concerned with the impacts to non-target and protected species, as well as the potential for increased gear loss. MA DMF commented that they are concerned about the impacts of an unlimited number of gillnets on spawning cod, citing a MA DMF scientific paper published in the North American Journal of Fisheries Management 2012.

Response: As stated above regarding this exemption, we do not believe concern for harbor porpoise warrants its disapproval at this time. We will continue to evaluate the impacts of this exemption, and will reconsider the approval of this exemption in future years, as needed. Based on concerns for spawning cod raised by MA DMF, we do believe that gillnet restrictions are warranted to protect this vulnerable fishery and, therefore, are restricting the use of this exemption to periods when cod spawning does not take place, as described above in Exemption 17 (Limits on the Number of Gillnets Imposed on Day Gillnet Vessels). Sectors vessels would be limited to fish the number of gillnets allowed by each RMA in the times and areas described where cod spawn.

Comment 29: Industry and one sector commented on the negative economic impacts if this exemption were disapproved. Industry stated that vessels cannot afford gear reductions in light of lower ACLs. One sector commented that revoking this

exemption would disproportionately impact smaller, inshore vessels.

Response: We understand industry's concern about revoking this exemption, given that vessel owners may have invested in additional gillnet gear, and that it is likely that there will be limited return on this investment in FY 2013, given the low ACLs. However, data in section 4.1.4.2 of the Sector EA indicates that catch per unit effort for gillnet vessels is decreasing. In other words, gillnet vessels are fishing harder and catching less fish. This is not the intended outcome of this exemption. A decrease in available fish, such as GOM cod, could explain this analyses and why the commenters are arguing that they need the exemption. Vessels need the ability to fish additional nets to catch enough fish that the trip is profitable. Because of these concerns, we are approving this exemption to provide some flexibility for smaller, inshore vessels. We are approving this exemption seasonally in FY 2013 due to concern over the affect that decreased catch per unit effort and increased gear in the water could have on spawning cod.

Gear Requirements in the Eastern U.S./Canada Area

Comment 30: We received several comments from industry, one sector, the Council, and ME DMR supporting the exemption from the selective gear requirements of the Eastern U.S./Canada Area, arguing that approval of this exemption will allow sectors to more fully harvest their Eastern GB allocations, and that it is more appropriate to allow sectors to determine if the use of selective gear is necessary.

Response: The exemption from this gear requirement was approved in FYs 2011 and 2012, and is again approved for FY 2013. We believe that these restrictions are no longer necessary under sector management because sectors are restricted to an ACE for each NE multispecies stock, which limits overall fishing mortality. We agree that sectors should be allowed the flexibility to determine if, and when, selective gear should be used.

Seasonal Restrictions for the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail/Haddock SAP

Comment 31: We received several comments on the exemption request for year-round access to the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail/Haddock SAP. Industry and the Council commented that the exemption should not be altered from the Council's original request to extend the opening to May (for a May through December opening for the Eastern U.S./Canada Haddock SAP, and May through January for the CA II Yellowtail Flounder/Haddock SAP). The Council also submitted comments regarding seasonal access to the Eastern U.S./Canada Haddock SAP, rejecting NMFS's position that this area should not be opened in May due to GB winter flounder spawning, and citing a study by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II; the study found low densities of winter flounder in the area in May. Industry reaffirmed the Council's comment on spawning with anecdotal evidence. In addition, industry noted that we did not raise concern with providing access to the Eastern U.S./Canada Haddock SAP in January and, consequently access should be allowed at this time. Industry also noted that the use of selective gear should prevent catch of certain stocks, which were noted with concern in the proposed rule.

Response: We concur with the updated Smolowitz *et al.* 2012 study that GB winter flounder spawning generally does not occur in May. Based on this updated information, we have expanded access to both SAP areas from May through the seasonal closure of each SAP. The proposed rule incorrectly cited the GB cod spawning season raised by the NEFSC, which is January through April for the Eastern U.S./Canada Haddock SAP (Berrien and Sibunka, 1999). Therefore, we do not believe it is appropriate to extend the season beyond the closure of the SAP, on December 31.

After reviewing numerous comments on these exemptions, we are approving them without the selective trawl gear requirement, given that sectors are limited by their ACE and because these areas are closed during peak spawning periods. Vessels may use any gear approved for the respective SAPs, as well as the standard otter trawl. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

Comment 32: MA DMF supported the SAP exemptions as proposed, asserting that opening these areas year-round may have negative effects, especially on spawning fish. MA DMF also requested that we provide the Council with data on the performance of selective gear.

Response: We agree that protecting spawning fish is critical, especially in light of declines in some NE multispecies stocks. Therefore, we have limited access to seasons where spawning is not of concern. For reasons described in the response to Comment 29 above, we are extending the exemption from the trawl restrictions in the Eastern U.S./Canada Area to these two SAPs.

DSM Requirements for Vessels Using Hand-Operated Jig Gear

Comment 33: The MFCA and MCCS support exemptions from DSM for jig and handgear vessels, arguing that these vessels catch minimal amounts of fish. They also note that the gear used by these vessels is the same as gear used by the recreational fleet, which does not receive monitoring. MCFA and MCCS also state that resources could be better used by monitoring the vessels that catch larger volumes of fish.

Response: Regulations implementing Amendment 16 established DSM requirements for the commercial fishing fleet. The Council did not elect to impose monitoring requirements on other segments of the fishery. The Council has considered and approved regulatory exemptions from DSM for certain categories of common pool vessels because the vessels encounter small amounts of NE multispecies, and we have provided similar exemptions for sector vessels (for Handgear-A permitted, for vessels fishing exclusively west of 72°30′ W. long., and for monkfish Category C- and D-permitted vessels fishing on a monkfish trip in the monkfish SFMA when such vessels are required to fish with nets containing 10-inch (25.4-cm) mesh codends or gillnets. For FY 2013, we received a request to exempt hand-operated jig vessels from DSM requirements, and believe the data summarized in the proposed rule demonstrate that only small amount of NE multispecies is discarded by vessels using this gear; therefore, the exemption is warranted. FW 48 proposes eliminating the DSM program. However, because FW 48 measures have not been approved at this time, we are approving this additional exemption from DSM requirements for hand-operated jig vessels.

Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board

Comment 34: We received several comments from industry and ME DMR supporting the ability of vessels to fish in multiple BSAs.

Response: The Council has not supported, nor have we implemented, regulations that universally restrict a vessel's ability to fish in multiple BSAs. To clarify the current requirements,

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder. Therefore, a vessel with GOM or GB winter flounder on board could only transit through the SNE/MA winter flounder stock area with its gear stowed in accordance with the provisions of § 648.23(b), and would be prohibited from fishing in the SNE/MA winter flounder stock area. This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area. We are approving an exemption from the prohibition against fishing in this area, provided a monitor is onboard all trips using the exemption. The monitor will be able to verify and accurately attribute winter flounder to the appropriate stock. See the response to Comment 16 for specifics on 100-percent industry-funded monitoring.

Comment 35: One sector and NESSN commented on the SNE/MA winter flounder exemption, noting that this exemption would provide efficiency by allowing a vessel to combine two trips into one trip, because currently, they are prohibited from fishing in the SNE/MA winter flounder stock area, if they have winter flounder onboard from another stock area. Fishing fewer trips may have the added benefit of reducing declarations or requests for monitors.

Response: We agree that approval of this exemption would increase a vessel's efficiency. We have approved this exemption, provided that these vessels comply with the 100-percent industry-funded ASM requirement, and note the possibility that this increase in efficiency may result in increased availability of monitors. Achievement of required monitoring coverage levels and observer availability will be monitored throughout the year and adjusted as needed.

Comment 36: One sector and NESSN questioned the basis and clarity of our concern that bias could be created by including data collected from these exemption trips in the calculated discard rate that is applied to unobserved trips. They contend that the order of fishing in areas should not matter, and that this exemption more closely mirrors historic fishing practices prior to the approval of Amendment 16 (i.e., prior to FY 2010).

Response: Historically (prior to 2010), vessels were allowed to retain SNE/MA winter flounder and therefore were free to fish between stock areas. However, the 2010 prohibition on retaining SNE/MA winter flounder, and the associated prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard, changed fishing practices. After additional consideration of the comments received and further review of the exemption request, we agree that trips using this exemption are representative of standard sector trips, and that the order that areas are fished will not introduce bias to discard rates. Also, having a monitor onboard will help to ensure that catch of winter flounder from other stock areas is properly recorded, and document SNE/MA winter flounder that is not retained.

Comment 37: CLF and Pew commented in opposition to the winter flounder exemption, stating that SNE/MA winter flounder is overfished, and approval of the exemption risks additional mortality to this stock if there is an increase in misreporting.

Response: We approved this exemption, provided an industry-funded monitor observes 100 percent of these trips. Having a monitor onboard will help to ensure that catch of winter flounder from other stock areas is properly recorded, and document SNE/MA winter flounder that is not retained.

Sampling Exemption

Comment 38: The U.S. Coast Guard recommended disapproval of the sampling exemption in order to increase the enforceability of LOAs and exempted fishing permits, expressing concern about allowing vessels to retain undersized fish, access closed areas, and exceed possession limits for research purposes without advanced notice. They argued that notice is needed to ensure that research requirements are understood and uniformly enforced.

Response: We value the input provided by our partners in fisheries enforcement. However, this exemption has been approved for only two sectors, the Fixed Gear Sector and the Northeast Coastal Communities Sector, to facilitate information collection programs included in each sector's operations plans. We believe that allowing only temporary possession through the sector operations plan minimizes the application burden to the public and that the proposed rule provided advanced notice of these research activities. Should another sector request the exemption, we will share this information with the U.S. Coast Guard and NMFS's Office of Law Enforcement. The sectors have requested, and are only being granted, temporary relief from the requirement to immediately discard under-sized or prohibited species, for the purposes of collecting scientific information. Vessels conducting this research must return fish to the sea as soon as practicable after sampling. To aid in enforcement, a sector vessel's LOA would detail these research activities.

GOM Sink Gillnet Mesh Exemption in May, and January Through April

Comment 39: MA DMF, MCCS, and MCFA opposed granting this exemption in FY 2013, given that GOM haddock is experiencing overfishing, and is approaching an overfished condition.

Response: This exemption was previously approved to provide sector vessels with an additional opportunity to target what was then a relatively healthy stock—GOM haddock. However, a 2012 operational assessment of the GOM haddock stock showed that the stock is experiencing overfishing and is approaching an overfished condition. We agree that it is inappropriate to approve an exemption that would allow increased targeting of a stock in poor condition, and therefore have disapproved this exemption for FY 2013.

Comment 40: Several industry members, ME DMR, and NESSN supported approval of the GOM sink gillnet mesh exemption. Industry argued that the sector's ACE, including the ACE for GOM haddock, will constrain the sector's impact when fishing under this exemption, and that it is the sector's responsibility to ensure that the behavior of its members results in appropriate usage of ACE. In addition, industry and NESSN asserted that it is difficult for gillnet vessels to catch haddock using mesh larger than 6 inches (15.2 cm) due to its shape. Finally, industry stated that disapproval of this exemption will make it more difficult to get a return on the investment of new nets.

Response: We generally agree that a sector's impacts are limited by an ACE, and that sectors should be free to decide how to maximize their usage of ACE, including through the use of selective gear, as necessary. However, given that GOM haddock is approaching an overfished condition, and may be considered a limiting stock for vessels fishing in the GOM, we believe it is inappropriate to grant an exemption that encourages increased targeting of this stock. Sectors may again request this exemption in future years, and we will reconsider granting this exemption based on updated GOM haddock stock information.

Comment 41: MA DMF acknowledged our concern for GOM haddock, but recommended that we reexamine net mesh selectivity, given that FW 48 proposes to decrease the minimum fish size for most stocks.

Response: We acknowledge MA DMF's concern about net mesh

selectivity; however, the Council recommended decreasing the minimum size for NE multispecies as a way to reduce discards and provide more revenue for sector vessels using current mesh sizes, and not to increase catch of smaller fish. Given the status of GOM haddock, it would not be prudent to allow a vessel to increase effort on GOM haddock. Therefore, we do not believe a review of selectivity of net mesh is warranted at this time.

Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips

Comment 42: The U.S. Coast Guard opposed this exemption, stating that allowing legal-sized NE multispecies and small mesh onboard would render minimum fish and mesh sizes unenforceable because the proper use of small mesh nets is only verifiable during a Coast Guard boarding. They also raised concern that, if approved, a monitor would be placed in an enforcement role. CLF and Pew raised concern that approval could increase mortality of juvenile fish and may increase the risk that gear will be deployed incorrectly.

Response: We share the U.S. Coast Guard's concern about enforceability. With different mesh sizes available vessels can too easily alter their nets or fishing behavior in anticipation of boarding to avoid detection of illegal fishing. We are therefore disapproving this exemption. We also raised concern in the proposed rule that at-sea monitors lacked training to monitor the small-mesh portion of the trip. Based on these concerns, this exemption was not approved. We also share the concern of CLF and Pew, as the proposed rule raised concern that a vessel could circumvent the rules and target allocated NE multispecies with small mesh, thereby increasing the catch of juvenile fish.

Comment 43: We received several comments regarding potential implementation of this exemption. ME DMR stated that it would be inconsistent with the current exempted fisheries to adjust NE multispecies bycatch levels below 5 percent. ME DMR also recommended that we not exclude data collected on trips using this exemption from the calculated discard rates for unobserved trips.

Response: This exemption has been disapproved.

Comment 44: NESSN and one sector commented that approval of this exemption could help minimize costs.

Response: We support the sectors' ability to request exemptions that will increase flexibility and lower operations costs, and have approved numerous exemptions to that end. However, due to enforcement concerns raised above in Comment 42, we are not approving this exemption for FY 2013.

Comment 45: NESSN and one sector asserted that our justification for requiring 100-percent industry funded monitoring was weak given our acknowledgement of the minimal bycatch of regulated NE multispecies in the small-mesh fisheries. They also stated that their proposal to deduct all bycatch of NE multispecies from their ACE further undermines our reason for disapproval. They further commented that we did not provide sufficient explanation as to the additional training required to deploy monitors on small-mesh exempted fishery trips. Finally, in place of monitoring requirements, the sectors claimed that selective gear requirements would have been more reasonable.

Response: The sectors' initial request for this exemption included a requirement that the exemption could only be used on a monitored trip. They argued that the monitor would be able to correctly attribute and confirm catch from small-mesh tows and from large-mesh tows. In addition, given our concerns about the potential for directed trips to skew discard estimates for unobserved trips and the potential to not achieve required coverage levels, we proposed this exemption with 100-percent industry-funded monitoring. We also noted that monitors do not receive training for exempted fisheries, as exempted fisheries are only subject to NEFOP coverage specified by SBRM. NEFOP observers certified to be deployed on small-mesh exempted fishery trips receive additional training in small-mesh fisheries, which covers gear modifications and methods for measurement, sampling scenarios, fish identification, incidental take sampling, and reporting requirements. While deducting the bycatch of regulated NE multispecies from the sector's ACE helps to address some concern, this exemption is not approved for use in FY 2013 due to enforcement and monitoring concerns highlighted in response to Comment 42 above. No further gear modifications were considered.

Closed Area Exemptions

Comment 46: Numerous individuals submitted comments on the Council's approval of a measure proposed in FW 48 that would allow sectors to request access to year-round mortality closed areas, and on the requests that will be considered in a future rulemaking. Many of these comments were specific to our consideration of requiring industry-funded ASM on 100 percent of trips, and commenters encouraged us to conduct a full analysis of these exemptions.

Response: This final rule disapproves exemptions from closed areas, because including these exemptions in this rulemaking could have delayed the approval of sector operations plans and allocations beyond May 1, due to needed analysis for these exemptions. We are in the process of evaluating the impacts of these requests. We intend to publish a proposed rule and accompanying analysis in the coming months, for potential implementation during FY 2013. These comments, therefore, are not relevant to this action, and the public is encouraged to comment on the upcoming rule proposing exemptions to year-round mortality closed areas for approval.

Provisions To Fish Without ACE

Comment 47: NESSN and NEFS 5 submitted several comments in support of their request to fish without ACE, stating that the data that they submitted demonstrates that the sector's catch of the limiting stock is minimal. MCCS supported the program, in theory, but believed additional development is needed before such a program is implemented.

Response: We support providing sectors additional opportunities to target healthy NE multispecies stocks and other non-groundfish stocks in light of low ACLs for FY 2013. We proposed and are approving several of the sectors' requests, based on our ability to verify minimal catch of the limiting stock (using a threshold of less than 1 percent) in observer/ASM and VTR data. We believe that the requirements of these programs, additional reporting and monitoring requirements, and a plan to revoke this provision if the sector encounters more than 100 lb (45.4 kg) of the limiting stock are adequate to monitor this exemption; however, we will monitor the usage of this provision closely and, if necessary, will develop additional requirements for future FYs.

Comment 48: CLF and Pew expressed concern that the approval of this provision could result in additional mortality on depleted stocks, and increase incentives to discard. They also believe that additional analysis is necessary prior to approving these programs.

Response: The proposed rule raised serious concern with these provisions, given the very low 2013 quotas for some stocks. However, we are approving these programs under conditions designed to address these concerns. These programs are granted only for the two requesting

sectors to target other species (i.e., non-NE multispecies stocks) when they have a limiting NE multispecies stock. We have established additional reporting and monitoring requirements for sector vessels to aid in our own monitoring of these programs. We believe requiring 100-percent monitoring on these trips minimizes misreporting concerns, and will help to collect information on encountered stocks. There are also other measures designed to maintain close control over and monitor catch, such as the 100-lb (45.4-kg) threshold on catching the limit stock, revoking the program once this threshold is reached, and requiring acquisition of ACE to account for any catch of the limiting stock.

These two requesting sectors originally sought numerous provisions to fish without ACE. We reviewed observer/ASM and VTR data, and only proposed provisions where the data indicated that the limiting stock was less than 1 percent of the total catch. Through historical practices, we believe that the sectors have adequately demonstrated their ability to target other species, while avoiding the limiting stock.

Comment 49: MA DMF supported the monitoring requirements proposed for this program, but recommended limiting the amount of time gillnets may be fished. In addition, MA DMF questioned whether the approval of these programs would result in a shift in effort away from the NE multispecies fishery and into other fisheries.

Response: Provisions to fish without ACE have been approved, provided 100 percent of the trips receive an ASM. This is necessary to sufficiently monitor these programs and also ensures that trips fishing without ACE are assigned observed discards (an unobserved trip would be assigned calculated discards, including for the limiting stock that must be avoided). As highlighted above, these provisions were approved based on our ability to verify very minimal catch of the limiting stock in FY 2010 and 2011 observer/ASM and VTR data for the requesting sectors and are approving these programs without restrictions on the amount of time that gear may be set. We will monitor the sectors using this provision, and may consider additional restrictions, if necessary.

We support providing sectors additional opportunities to target healthy NE multispecies stocks and other non-groundfish stocks in light of low ACLs for FY 2013, but note the importance of monitoring the use of this provision for impacts on other species. We request information on anticipated effort shifts in each sector's operations plan, and require catch and effort information in each sector's annual report. We will monitor the use and impact of this provision in FY 2013, and will reconsider approval and will consider additional restrictions in future FYs, if necessary.

Inshore GOM Restrictions

Comment 50: Pew and CLF expressed support for the inshore GOM restrictions proposed by most sectors, stating that monitoring requirements will help to address impacts of fishing inshore and help to minimize misreporting. MA DMF also expressed support for the restriction, but noted that allowing vessels to fish in the offshore portion of GOM and GB on the same trip will not address misreporting. Additionally, MA DMF expressed some concern that it may be difficult to get members to agree to this policy.

Response: Most sectors have proposed a provision to restrict a vessel's fishing activity in the GOM, unless an observer is onboard. We support the sector's proposal, which attempts to address both misreporting and area access issues. We think that this measure addresses some reports of misattributing catch, but acknowledge that, as approved, it may not address all concerns because it does not completely restrict fishing between the GOM BSA and other BSAs. Given that this provision would provide help addressing misreporting, we are approving this provision for use in FY 2013. Through SIMM, we have provided information to sector managers to aid in the identification of such trips, and expect the sectors to enforce this operations plan provision within the sector. Several sectors have retained the right to remove the inshore GOM restrictions from their final operations plans.

Formalizing a Process To Revoke an Exemption Inseason

Comment 51: NSC and NESSN expressed concern about our attempt to broaden the authority to revoke an exemption inseason. NSC recommended withdrawing this proposal until it can be fully vetted by the Council.

Response: In prior proposed and final rules for sector operations, we have identified our potential need to revoke several exemptions inseason if certain concerns arose or conditions were not met. Our intention was to provide additional information in the proposed rule on the administrative process for revoking an exemption through notice in the **Federal Register**, consistent with APA, and not to expand our authority to do so. Several exemptions have again been approved for FY 2013 with conditions to ensure that they operate consistent with their objectives and do not jeopardize fishing mortality objectives. Additionally, we will inform sectors of any concerns prior to considering an exemption revocation to allow time for the sector to address those concerns.

Comment 52: NSC and NESSN also commented that we should proactively communicate with sectors when considering revoking an exemption. Not doing so would weaken sectors and harm sector participants, especially as upfront collaboration has previously proven successful.

Response: We agree. We communicate with sector managers on a regular basis on issues including data management, quota management, membership changes, and questions regarding regulations. Joint monitoring has been an integral part of sector management for FYs 2010 through 2012. We intend to continue this communication and will attempt to address any issues as they arise. Any action taken to revoke a sector exemption would require communication with the sector throughout the process of notifying the public. Again, our intent was to provide additional information on the administrative process for revoking an exemption and to provide advance notice of this to the public through the **Federal Register** in the FY 2013 proposed rule.

Comment 53: MA DMF questions the thresholds that would be used for revoking an exemption, and sought clarification on whether exemptions would be disapproved individually or as a whole. CLF and Pew supported the idea of taking inseason action if data indicated that an exemption increased mortality, or if issues resulted from monitoring requirements.

Response: As in previous years, we intend to monitor usage of exemptions to ensure that they operate consistently with their objectives and conditions and do not jeopardize fishing mortality objectives. We also intend to monitor compliance with certain exemption requirements during the FY. The RA has previously retained the right to rescind an exemption if sectors were determined to be out of compliance with the requirements of the exemption (e.g., bycatch requirements, catch composition requirements, VMS requirements, ASM coverage requirements, etc.). We will continue to monitor the use of and compliance with exemption requirements, and would only consider revoking an exemption if certain exemption requirements,

outlined in the proposed rule are not met.

Sector EA

Comment 54: Pew and CLF commented that sector operations and exemptions are being considered with only limited analysis in the sector EA.

Response: We prepared the required NEPA documentation to accompany the 17 sector operations plans we received for FY 2013, and the EA describes the potential impacts of approving FY 2013 sector operations plans on the human, physical, and biological environment and concludes that all beneficial and adverse impacts of this action have been addressed to reach the conclusion of no significant impacts. We believe that the sector EA includes sufficient analysis to support the approved sector measures. The Council established a process requiring sectors to develop operations plans and EAs to analyze their proposed operations. Since FY 2010, NMFS has either paid a contractor drafted the supporting analysis. We have signed a FONSI stating that sector operations will not significantly impact the quality of the human environment, and all beneficial and adverse impacts of the Proposed Action have been addressed to reach the conclusion of no significant impacts.

APA Comments

Comment 55: CLF and Pew noted that the proposed rules for FWs 48 and 50 and for sector operations plans were published out of logical sequence, contrary to the requirements of the APA. Finally, one industry member urged us to publish a final rule as early as possible to allow industry the maximum amount of planning time in advance of FY 2013.

Response: Due to unexpected changes in stock status, the Council required additional time to determine stock allocations for FY 2013, which delayed our ability to publish the proposed sector rule and the proposed rules for FWs 48 and 50 in the **Federal Register**. Each proposed rule was published as soon as possible, to provide the maximum amount of time for the public to comment for sectors to plan in advance of FY 2013. This resulted in the proposed rule for sector operations publishing first, followed by the proposed rules for FWs 48 and 50. We provided a 15-day comment period for this rule; a longer comment period would have been impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. A vessel enrolled in a sector may not fish in FY 2013 unless its sector operations plan is approved. If the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2013. Both of these options would have negative impacts for the permits enrolled in the sectors.

To ensure that the final rule published in advance of the start of FY 2013, we reduced the comment period to 15 days. We published this rule as quickly as possible following the close of the comment period, while taking the appropriate amount of time to carefully consider the approval or disapproval of each exemption or measure, and review and respond to each comment.

Comment 56: CLF, Pew, and DMF stated there was limited opportunity to comment on several interrelated rules (this action, FW 48, and FW 50). Oceana requested an extension of the comment period associated with the proposed rule to allow time for an external review of the analysis supporting ASM coverage rate determination. They recommended that the Council or the Council's Science and Statistical Committee review the analysis to ensure that it is suitable.

Response: As stated above, we provided a 15-day comment period for this rule; a longer comment period would be impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. We have posted additional information on our Web site responding to Oceana's request for additional information on data timeliness and the analysis conducted to determine the required level of ASM coverage for FY 2013. Based on these comments, we are providing the public additional opportunity to comment on the ASM coverage level. In addition, we are also accepting additional comment on revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels in this interim final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is exempt from review under Executive Order (E.O) 12866.

The AA finds good cause under 5 U.S.C. 553(d)(1) and (3) to waive the 30-day delay in effectiveness so that this final rule may become effective upon filing because this rule relieves several restrictions. Sector Operation Plan exemptions grant exemptions or relieve restrictions that provide operational flexibility and efficiency that help avoid short-term adverse economic impacts on NE multispecies sector vessels. When the 17 approved Sector Operations Plans become effective, sector vessels are exempted from common pool trip limits, DAS limits, and seasonal closed areas. These exemptions provide vessels with flexibility in choosing when to fish, how long to fish, what species to target, and how much catch they may land. They also relieve some gear restrictions, reporting and monitoring requirements, and provide access to additional fishing grounds through the authorization of 23 exemptions from NE multispecies regulations for FY 2013. This flexibility increases efficiency and reduces costs.

In addition to relieving restrictions and granting exemptions, avoiding a delay in effectiveness avoids significant adverse economic impacts. A delay in implementing this rule would prevent owners who joined a sector in FY 2013 (854 permits, 58 percent of eligible groundfish permits accounting for 99 percent of the historical NE multispecies catch) from fishing during the delay and would diminish the advantage of the flexibility in vessel operations, thereby undermining the intent of the rule. During any delay, sector vessels would be prohibited from fishing for groundfish. Being prohibited from fishing for up to 30 days would have a significant adverse economic impact on these vessels because vessels would be prevented from fishing in a month when sector vessels landed approximately 10 percent of several allocations, including GB cod east and GB winter flounder. Further, sector vessels could only fish during this delay if they chose to fish in the common pool. Once they switched to the common pool, however, they could not return to a sector for the entire fishing year and would forego the flexibility and economic efficiency afforded by sector exemptions. Vessels choosing to fish in the common pool to avoid a 30 day delay in the beginning of their season would then forego potential increased flexibility and efficiencies for an entire fishing year. For the reasons outlined above, good cause exists to waive the otherwise applicable requirement to delay implementation of this rule for a period of 30 days.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider

the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to $4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule, as required by section 604 of the RFA. The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA); the relevant portions of the proposed rule describing sector operations plans and requested exemptions; the corresponding analysis in the EA prepared for this action; the discussions, including responses to public comments included in this final rule; and this summary of the FRFA. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Need for, and Objectives of, This Rule

Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. The intended effect is to provide vessels participating in sectors with increased operational flexibility. The flexibility afforded sectors includes exemptions from certain regulations, as well as the ability to request additional exemptions. The objective of the action is to authorize the operations of 17 sectors in FY 2013, and to allow the permits enrolled in sectors and the NE communities where they dock and land to benefit from sector operations.

Summary of Public Comments

All public comments, including those in response to the IRFA and comments regarding the economic effects of the rule not specifically addressed in the IRFA, and our response to those comments, are contained in this preamble. We received several comments on the economic impacts of monitoring. These are summarized in Comments 10 through 13 and their responses.

Description and Estimate of the Number of Small Entities Affected

We have recently worked to identify ownership affiliations, and incorporated that data into this analysis; consequently, this analysis may differ from analysis conducted in previous years. Efforts to more accurately identify ownership affiliations are ongoing. For the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. For example, only permits with identical ownership personnel are categorized as an ownership entity.

The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 303 ownership entities (301 qualifying as small entities)—the number of entities anticipated to enroll in the 17 sectors that have submitted operations plans for FY 2013. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2013, the number of permits participating in sectors on May 1, 2013, and the resulting sector ACE allocations, are likely to change slightly. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2012, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2013.

The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, and upcoming FW 48, and FW 50, which have placed additional effort restrictions on the NE multispecies fleet.

Reporting, Recordkeeping and Other Compliance Requirements

This final rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. This action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action will be documented in an LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block will reduce the reporting burden for ownership entities with sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Ownership entities that include any sector vessels receiving an exemption from the gillnet limit (up to 150 nets) will also be exempt from current tagging requirements, and will instead be required to tag gillnets with one tag per net. Compliance with the tagging requirement will not necessarily require ownership entities with sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, ownership entities with sector vessels that have not previously purchased the maximum number of gillnet tags may need to purchase additional tags to comply with this requirement, at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear requires each ownership entity to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags could be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if an ownership entity chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each, without rigging.

In order to utilize the exemption from the minimum trawl mesh size to target redfish, an ownership entity would need to purchase or utilize a codend of small mesh. At the time the FRFA was prepared, no cost information was available for a 4.5-inch (11.4-cm) mesh codend. The purchase of a 4.5-inch (11.4-cm) mesh codend would depend on an ownership entities' perceived economic benefit of utilizing the exemption, which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP will not change the reporting burden of individual participating ownership entities, as vessels would merely change the recipient of their current daily report.

Other exemptions in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping requirements, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rule implementing Amendment 16, each

approved FY 2012 sector operations plan, and in the draft FY 2013 sector operations plans.

Duplication, Overlap or Conflict With Other Federal Rules

This action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

Steps the Agency Has Taken To Minimize Significant Economic Impacts on Small Entities

This action will create a positive economic impact for the participating ownership entities that include sector vessels because it mitigates the impacts from restrictive management measures implemented under the FMP. Few quantitative data on the precise economic impacts to individual ownership entities are available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30 ft (9.1 m) in length and for vessels 75 ft (22.9 m) and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the final action provides benefits to sector members that they would not have under the No Action Alternative. This preamble discusses reasons for approval or disapproval of each requested exemption.

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 shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall 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, an LOA, or letter of authorization, for each permit holder enrolled in a sector that also serves as 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 or bulletin, will be sent to all holders of NE multispecies permits enrolled in a sector. The guide and this final rule will be available upon request (see **ADDRESSES**).

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

Dated: April 26, 2013.

Samuel D. Rauch III,

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

[FR Doc. 2013–10281 Filed 4–30–13; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 78, No. 85
Thursday, May 2, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0078]

RIN 0579–AD72

Importation of Female Squash Flowers From Israel Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of female squash flowers from Israel into the continental United States. As a condition of entry, female squash flowers from Israel would be subject to a systems approach that would include requirements for pest exclusion at the production site and fruit fly trapping and monitoring. The female squash flowers would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Israel with an additional declaration that the female squash flowers had been inspected and found free of quarantine pests. This action would allow for the importation of female squash flowers from Israel into the continental United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before July 1, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0078-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0078, 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-2012-0078* 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: Ms. Meredith Jones, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2289.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Male squash flowers from Israel are currently admissible into the continental United States. However, the importation of female flowers is not allowed because the immature fruit that may be attached to the female flowers is a potential host of quarantine pests.

The national plant protection organization (NPPO) of Israel has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow female squash flowers from Israel to be imported into the continental United States. As part of our evaluation of Israel's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

All female squash flowers may potentially have immature fruit attached. Although the fruit may be very small, it still poses a potential risk. Therefore, while we are proposing to allow the importation of female squash flowers specifically, the PRA, titled ''Importation of Fresh Fruit and Flowers of Summer Squash, *Cucurbita pepo* L., from Israel into the Continental United States: A Qualitative, Pathway-initiated Risk Assessment'' (July 13, 2009), evaluates the risks associated with the importation of female squash flowers with and without fruit from Israel into the continental United States.

The PRA identified two pests of quarantine significance present in Israel that could be introduced into the United States through the importation of immature fruit attached to female squash flowers. These are *Ceratitis capitata* (Mediterranean fruit fly or Medfly) and *Dacus ciliatus* (Ethiopian fruit fly). The documents also identified one pest that could be introduced by the importation of female squash flowers without fruit, *Scirtothrips dorsalis* (Chilli thrips), and one pest associated with both the female squash flower and squash fruit, *Helicoverpa armigera* (cotton bollworm). All four of these pests were determined to have a high risk potential.

Based on the conclusions of the PRA and RMD, we are proposing to allow the importation of female squash flowers from Israel into the continental United States subject to a systems approach. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain pests. As a condition of entry, female squash flowers from Israel would be subject to requirements for pest exclusion at the production site, fruit fly trapping and monitoring, packing the flowers, and a phytosanitary certificate. The specific mitigation measures required in the systems approach are discussed below, as well as in the RMD.

Production Site Requirements

Under proposed § 319.56–59(a), female squash flowers from Israel would have to be grown in approved production sites registered with the NPPO of Israel. Initial approval of production sites would be completed jointly by the NPPO of Israel and APHIS. The NPPO of Israel would have

to visit and inspect the production sites to ensure that the necessary mitigation measures have been completed. APHIS would be able to monitor the production sites, if necessary. This condition would ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing female squash flowers for export to the United States.

Production sites for female squash flowers would also have to be in pest-exclusionary structures (PES). The PES would be required to have self-closing double doors, and all openings, including vents, to the outside of the PES would have to be covered by screening with mesh openings of not more than 1.6 mm. Screening with openings of not more than 1.6 mm will prevent the introduction of pests, including fruit flies.

Mitigation Measures for Fruit Flies

Proposed § 319.56–59(b) would address the mitigation measures required for fruit flies. The NPPO of Israel would be required to set, maintain, and monitor fruit fly traps with an APHIS-approved bait at a density of one trap per hectare, with a minimum of one trap inside each PES and one trap outside the entrance of each PES. The traps would have to be checked every 7 days. We also propose to require the NPPO of Israel to maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The trapping records would have to be made available to APHIS upon request.

Capture of a single fruit fly of concern inside a registered production site would immediately result in cancellation of exports to the United States from that production site. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a production site would also result in immediate cancellation of exports to the United States from that production site. In both cases, exports from the production site in question could not resume until APHIS and the NPPO of Israel have mutually determined that the risk has been properly mitigated.

Packinghouse Requirements

Proposed § 319.56–59(c) would specify that, while being used for packing female squash flowers for export to the United States, the packinghouses would only be allowed to accept flowers from registered production sites. This requirement would reduce the risk that quarantine pests are introduced to flowers exported to the United States in the packinghouse.

Post-Harvest Procedures

Under proposed § 319.56–59(d), female squash flowers would have to be placed in cartons or containers while still in the PES. The cartons or containers would have to be marked to show the official registration number of the production site. The place of production where the flowers were grown must remain identifiable from the time when the blossoms leave the PES, to the packinghouse, and through the export process. This requirement would allow the shipments to be traced back to the production site in the event of the discovery of a pest.

Commercial Consignments

Under proposed § 319.56–59(e), only commercial consignments of female squash flowers would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

Inspection and Phytosanitary Certificate

Because *H. armigera* and *S. dorsalis* are large external feeders that cause easily visible damage, they would likely be detected during inspection. Under proposed § 319.56–59(f), each consignment of female squash flowers would have to be accompanied by a phytosanitary certificate issued by the NPPO of Israel with an additional declaration stating that the consignment has been inspected and found free of *C. capitata, D. ciliatus, H. armigera,* and *S. dorsalis.* This requirement would certify that the provisions of the regulations have been met.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would amend the regulations to allow, under certain conditions, the importation of female squash flowers from Israel into the continental United States. Squash flowers have gained popularity as a garnish for dishes, desserts, and salads, and as an ingredient in other dishes. Marketing of commercially grown edible flowers is typically directed to upscale restaurants.

Farms that solely produce squash flowers are rare. The blossoms are typically a byproduct of squash fruit production. Squash is commercially produced throughout the United States, but principally in Michigan, California, Florida, and Georgia.

The Small Business Administration's small-entity standard for U.S. farms that produce squash is annual receipts of not more than $750,000. In 2007, the average market value of sales by the 11,821 U.S. farms that produced squash was about $17,222, well below the small-entity standard. We infer that by far most farms producing squash, including farms producing squash flowers, are small entities.

Israel is expecting to export 10 metric tons of fresh female squash flowers annually to the United States. We do not know the quantity or value of female squash flower production in the United States, or the quantity or value of female squash flowers imported from other countries. Without basic production and trade information, we are unable to evaluate potential impacts of this proposed rule. We welcome information of this type that would permit an analysis of possible effects for U.S squash flower producers.

Executive Order 12988

This proposed rule would allow female squash flowers to be imported into the continental United States from Israel. If this proposed rule is adopted, State and local laws and regulations regarding female squash flowers imported under this rule would be preempted while the product is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the

ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2012–0078. Please send a copy of your comments to: (1) Docket No. APHIS–2012–0078, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of female squash flowers from Israel into the continental United States. As a condition of entry, female squash flowers from Israel would be subject to a systems approach that would include requirements for pest exclusion at the production site and fruit fly trapping and monitoring. The importation of female squash flowers from Israel will also require information collection activities that include production site registrations, trapping records, box markings, and phytosanitary certificates issued by the national plant protection organization of Israel with an additional declaration that the female squash flowers had been inspected and found free of quarantine pests. This action would allow for the importation of female squash flowers from Israel into the continental United States while continuing to provide protection against the introduction of quarantine pests.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0455 hours per response.

Respondents: Producers and importers of female squash flowers, and the NPPO of Israel.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 1,743.

Estimated annual number of responses: 10,458.

Estimated total annual burden on respondents: 476 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–59 is added to read as follows:

§ 319.56–59 Female squash flowers from Israel.

Female squash flowers (*Cucurbita pepo* L.) may be imported into the continental United States from Israel only in accordance with this section and other applicable provisions of this subpart. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata, Dacus ciliatus, Helicoverpa armigera,* and *Scirtothrips dorsalis.*

(a) *Production site requirements.* (1) Production sites in which the female squash flowers are produced must be registered with the national plant protection organization (NPPO) of Israel. Initial approval of production sites must be completed jointly by the NPPO of Israel and APHIS.

(2) The NPPO of Israel must visit and inspect the production sites. APHIS may monitor the production sites if necessary.

(3) Production sites must be inside pest-exclusionary structures (PES). The PES must have self-closing double doors. All openings, including vents, to the outside of the PES must be covered by screening with mesh openings of not more than 1.6 mm.

(b) *Mitigation measures for fruit flies (C. capitata and D. ciliatus).* (1) The NPPO of Israel must set and maintain fruit fly traps with an APHIS-approved bait at a rate of one trap per hectare, with a minimum of one trap in each PES and one outside the entrance of each PES. The NPPO of Israel must check the traps every 7 days and maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The NPPO must maintain trapping records and make the records available to APHIS upon request.

(2) Capture of a single fruit fly of concern inside a production site will immediately result in cancellation of exports to the United States from that production site. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a production site will also result in immediate cancellation of exports to the United States from that production site. In both cases, exports from the production site in question may not resume until APHIS and the NPPO of

Israel have mutually determined that the risk has been properly mitigated.

(c) *Packinghouse requirements.* While in use for exporting female squash flowers to the United States, the packinghouses may only accept flowers from registered production sites.

(d) *Post-harvest procedures.* Before being removed from the PES, harvested female squash flowers must be placed in field cartons or containers that are marked to show the official registration number of the production site. The place of production where the flowers were grown must remain identifiable from the time when the blossoms leave the production site, to the packinghouse, and through the export process.

(e) *Commercial consignments.* The female squash flowers may be imported in commercial consignments only.

(f) *Phytosanitary certificate.* Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Israel with an additional declaration stating that the consignment has been inspected and found free of *Ceratitis capitata, Dacus ciliatus, Helicoverpa armigera,* and *Scirtothrips dorsalis.*

Done in Washington, DC, this 26th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–10382 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0042]

RIN 0579–AD69

Importation of Fresh Beans, Shelled or in Pods, From Jordan Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of commercial shipments of fresh beans, shelled or in pods (French, green, snap, and string), from Jordan into the continental United States. As a condition of entry, the beans would have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. The beans would also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests. This action would allow for the importation of fresh beans, shelled or in pods, from Jordan into the continental United States while continuing to provide protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before July 1, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0042-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0042, 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-2012-0042* 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: Mr. Marc Phillips, Senior Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 851–2114.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Currently, we do not allow the importation of fresh beans (*Phaseolus vulgaris* L.), shelled or in pods (French, green, snap, and string), from Jordan into the continental United States. The Animal and Plant Health Inspection Service (APHIS) received a request from the national plant protection organization (NPPO) of Jordan to allow such beans to be imported from Jordan into the continental United States (the lower 48 States, the District of Columbia, and Alaska). As part of our evaluation of Jordan's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled ''Importation of Fresh Beans (*Phaseolus vulgaris* L.), Shelled or in Pods, from Jordan into the Continental United States: A Qualitative, Pathway-Initiated Risk Assessment'' (February 2011), evaluates the risks associated with the importation of fresh beans into the continental United States from Jordan. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the United States of fresh beans from Jordan.

The PRA identifies seven quarantine pests that could be introduced into the United States in consignments of fresh beans from Jordan. A quarantine pest is defined in § 319.56–2 as ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' In the PRA, the likelihood and consequences of introducing these pests to the United States are considered. Five of the pests are considered to have high pest risk potentials, and two, medium pest risk potentials, as shown in the following chart:

LIST OF QUARANTINE PESTS

Type	Organism	Taxonomy	Pest risk potential
Arthropods	*Chrysodeixis chalcites* (Esper)	Lepidoptera: Noctuidae	High
	Helicoverpa armigera (Hübner)	Lepidoptera: Noctuidae	High
	Liriomyza huidobrensis Blanchard	Diptera: Agromyzidae	High
	Maconellicoccus hirsutus (Green)	Hemiptera: Pseudococcidae	High
	Spodoptera littoralis (Boisduval)	Lepidoptera: Noctuidae	High
	Lampides boeticus Linnaeus	Lepidoptera: Lycaenidae	Medium
Fungus	*Phoma exigua* var. *diversispora* (Bubák) Boerema	Ascomycete: Mitosporic fungi	Medium

For pests with high pest risk potential, specific phytosanitary measures, in addition to standard port-of-entry inspections of the commodity being imported into the United States, are strongly recommended. Such additional measures may also be necessary for pests with medium pest risk potential.

Based on the findings of our PRA and risk management document, we are proposing to amend the regulations to allow the importation of commercial shipments of fresh beans (*Phaseolus vulgaris* L.), shelled or in pods, from Jordan into the continental United States, subject to a systems approach.

The systems approach would require that the commodity be packed in facilities that are registered with and approved by the NPPO of Jordan. Each shipping box would have to be marked with the identity of the packing facility so that shipments can be traced back to the facility in the event of the discovery of a pest.

The beans would have to be washed in potable water, which will assist in removing any insects feeding on individual beans.

We would require the beans to be inspected by the NPPO of Jordan and found to be free of the quarantine pests listed above before export to the United States. *Chrysodeixis chalcites, Helicoverpa armigera, Lampides boeticus,* and *Spodoptera littoralis* cause obvious feeding damage and frass on beans, allowing beans infested with these pests to be eliminated during packing. These four caterpillar pests are also relatively large in their adult forms and can easily be seen during inspection. The pink hibiscus mealy bug, *Maconellicoccus hirsutus,* has a grayish-pink body covered with mealy white wax and white wax filaments projecting from the body, making the pest easily visible on infested beans. It also causes obvious damage. *Liriomyza huidobrensis* is a leafminer whose mines are easily seen on bean leaves and pods; therefore, beans with damage caused by this pest can be culled during packing.

The remaining pest, the fungus *Phoma exigua* var. *diversispora,* also causes conspicuous damage to fresh beans in the form of grayish to brownish, concentric spots, 1–3 centimeters in diameter, which may later show concentric rings of small black pycnidia. Based on these conspicuous symptoms, *Phoma exigua* var. *diversispora* will be easy to recognize when beans are inspected by the NPPO of Jordan. The fungus may also infect seeds. Infected seed nearly always fail to germinate or result in post-emergence killing of the plants by the fungus. Since the intended use of the imported commodity is consumption and it will be exported in the form of fresh beans, immature seeds will have no germination capacity, which eliminates the seed transmission risk.

To ensure that early instars of the four caterpillar pests referred to above are not present internally in the bean pods and missed during the visual inspection, each bean would have to either be cut into cut into chevrons or pieces that do not exceed 2 centimeters in length, or shredded or split the length of the bean pod in pieces not exceeding 8 centimeters in length and 8.5 millimeters in diameter. Cutting or splitting the beans would allow for the detection of larvae of pests of the order Lepidoptera during inspection, while shredding would both expose and destroy any internal feeding insects.

Only commercial consignments of fresh beans would be allowed to be imported from Jordan. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Consignments of fresh beans would also need to be accompanied by a phytosanitary certificate issued by Jordan's NPPO attesting that the proposed requirements have been met and that the consignment was inspected and found free of quarantine pests.

We would add these requirements to the regulations in a new § 319.56–59.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The analysis examines the expected economic impact on U.S. small entities of our proposal to allow importation of fresh beans, shelled or in pods (French, green, snap, and string) from Jordan into the continental United States.

The Small Business Administration's small-entity standard for U.S. farms that produce fresh beans is annual receipts of not more than $750,000. In 2007, the average market value of sales by the 15,654 U.S. farms that produced snap beans for the fresh market was about $25,400, well below the small-entity standard.

Jordan expects to export 200 metric tons of fresh beans to the continental United States annually. This quantity is equivalent to less than one-tenth of 1 percent of U.S fresh snap bean production. While most entities that may be affected by the proposed rule are

small, the impact of the rule would be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh beans, shelled or in pods, to be imported into the United States from Jordan. If this proposed rule is adopted, State and local laws and regulations regarding fresh beans imported under this rule would be preempted while the fruit is in foreign commerce. Fresh beans are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2012–0042. Please send a copy of your comments to: (1) Docket No. APHIS–2012–0042, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of commercial shipments of fresh beans, shelled or in pods (French, green, snap, and string), from Jordan into the continental United States. As a condition of entry, the beans would have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. The beans would also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests. Implementing this rulemaking would require packinghouse registration and shipping box labeling, as well as the completion of phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: NPPO of Jordan and U.S. importers.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 4.17.

Estimated annual number of responses: 25.

Estimated total annual burden on respondents: 15 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–59 is added to read as follows:

§ 319.56–59 Fresh beans, shelled or in pods, from Jordan.

Fresh beans (*Phaseolus vulgaris* L.), shelled or in pods (French, green, snap, and string), may be imported into the continental United States from Jordan only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Chrysodeixis chalcites, Helicoverpa armígera, Lampides boeticus Liriomyza huidobrensis, Maconellicoccus hirsutus, Phoma exigua* var. *diversispora,* and *Spodoptera littoralis.*

(a) *Packinghouse requirements.* The beans must be packed in packing facilities that are approved and registered with Jordan's national plant protection organization (NPPO). Each shipping box must be marked with the identity of the packing facility.

(b) *Post-harvest processing.* The beans must be washed in potable water. Each bean pod must be either cut into chevrons or pieces that do not exceed 2 centimeters in length, or shredded or split the length of the bean pod. Split or shredded bean pod pieces may not exceed 8 centimeters in length and 8.5 millimeters in diameter.

(c) *Commercial consignments.* The beans must be imported as commercial consignments only.

(d) *Phytosanitary certificate.* Each consignment of fresh beans must be accompanied by a phytosanitary certificate issued by Jordan's NPPO attesting that the conditions of this section have been met and that the consignment has been inspected and

found free of the pests listed in this section.

Done in Washington, DC, this 26th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–10383 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0045]

RIN 1904–AC87

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Ceiling Fans and Ceiling Fan Light Kits

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

ACTION: Notice of public meeting and availability of the framework document; correction and extension of the public comment period.

SUMMARY: On March 15, 2013, the U.S. Department of Energy (DOE) published a notice of public meeting and availability of the Framework Document regarding energy conservation standards for residential ceiling fans and ceiling fan light kits in the **Federal Register.** This document announces an extension of the public comment period for submitting comments on the Framework Document or any other aspect of the rulemaking for ceiling fans and ceiling fan light kits. The comment period is extended to June 14, 2013. DOE is also correcting an error in the docket number set forth in two places in the prior notice.

DATES: DOE will accept comments, data, and information regarding this rulemaking received no later than June 14, 2013.

ADDRESSES: Any comments submitted must identify the Framework Document for ceiling fans and ceiling fan light kits and provide docket number EERE–2012–BT–STD–0045 and/or Regulation Identification Number (RIN) 1904–AC87. Interested parties are encouraged to submit comments electronically. However, comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CeilingFanLightKits2012STD0045@ee.doe.gov.* Include the docket number EERE–2012–BT–STD–0045 and/or RIN 1904–AC87 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in Word Perfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/65.* This Web page contains links to the Framework Document and other supporting materials and information for this rulemaking on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

For information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ceiling_fan_light_kits@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2013, DOE published a notice of public meeting and availability of the Framework Document in the **Federal Register** (78 FR 16443) to make available and invite comments on the Framework Document regarding energy conservation standards for residential ceiling fans and ceiling fan light kits. That notice set a deadline for the submission of written comments by April 29, 2013, and comments were also accepted at a public meeting held at DOE Headquarters on March 22, 2013. The American Lighting Association (ALA) requested an extension of the comment period. ALA stated the additional time is necessary for interested parties to consider and respond to the Framework Document and public meeting presentation, in order to submit meaningful and useful comments.

After careful consideration of ALA's request, DOE has determined that an extension of the public comment period is appropriate and in the public interest based on the foregoing reasoning. Accordingly, DOE is hereby extending the comment period and will consider any comments received by midnight of June 14, 2013 (with any comments received by that time deemed to be timely submitted).

Correction

In the **ADDRESSES** section of the March 15, 2013 **Federal Register** notice announcing the availability of the Framework Document for residential ceiling fans and ceiling fan light kits, DOE mistakenly listed the docket number for this rulemaking as EERE–2011–BT–STD–0045 and EERE–2010–BT–STD–0045. However, the initial heading to the notice did recite the correct docket number, which is EERE–2012–BT–STD–0045. This notice hereby corrects the errant docket numbers to all read as EERE–2012–BT–STD–0045.

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–10381 Filed 5–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2013–BT–STD–0021]

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Warm Air Furnaces

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

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking to consider amended energy conservation standards for commercial warm air furnaces. Once completed, this rulemaking will fulfill DOE's statutory obligation by December 31, 2013 to either propose amended energy conservation standards for warm air furnaces or to make a determination that the existing standards do not need to be amended. This notice seeks to solicit information to assist DOE in determining whether national standards more stringent than those that are currently in place would result in a significant amount of additional energy savings and whether such amended national standards would be technologically feasible and economically justified. In overview, this document presents a brief description of the analysis DOE plans to perform for this rulemaking and requests comment on various issues relating to each of the analyses (*e.g.,* market assessment, engineering analysis, energy use analysis, life-cycle cost and payback period analysis, and national impact analysis). Although this document contains numerous specific topics on which the Department is particularly interested in receiving written comment, DOE welcomes views and information from the public on any subject within the scope of this rulemaking (including relevant matters not specifically raised in this RFI).

DATES: Written comments and information are requested on or before June 3, 2013.

ADDRESSES: Interested parties are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0021, or by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CommWarmAirFurn 2013STD0021@ee.doe.gov.* Include docket number EERE–2013–BT–STD–0021 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 286–1692. Email: *commercial_furnaces@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Introduction

A. Authority

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes provisions covering the commercial warm air furnace equipment that is the subject of this notice.[2] In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The initial Federal energy conservation standards for commercial warm air furnaces were added to EPCA by the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486. (42 U.S.C. 6313(a)(4)) These types of covered equipment have a rated capacity (rated maximum input) greater than or equal to 225,000 Btu/h, can be gas-fired or oil-fired, and are designed to heat commercial buildings. *Id.*

Section 5(b) of the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012), amended EPCA to include a requirement for DOE to consider amending the standards for certain types of commercial and industrial equipment [3] every six years, as well as a mandate that DOE must conduct an expedited rulemaking to consider amended energy conservation standards for any covered equipment of

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act, Public Law 112–210 (Dec. 18, 2012).

[3] These equipment types include small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks (''ASHRAE equipment'').

those types for which more than 6 years has elapsed since the issuance of the most recent final rule establishing or amending a standard for the product as of the date of AEMTCA's enactment (*i.e.,* December 18, 2012). (42 U.S.C. 6313(a)(6)(C)(i) and (vi) [4]) In general, when conducting such a review, DOE must publish either: (1) a notice of determination that the current standards do not need to be amended, or (2) a notice of proposed rulemaking containing proposed standards; however, for those types of equipment for which more than six years has passed since the last final rule, Congress also set a deadline of December 31, 2013 for publication of the determination/proposed rule. *Id.*

In order to meet the new requirements added by AEMTCA, DOE has begun to review its existing energy conservation standards for those equipment types listed in 42 U.S.C. 6313(a) for which at least six years have elapsed since issuance of the most recent final rule, including the commercial warm air furnaces that are the subject of this notice.

Today's notice represents the initiation of the mandatory review process required by AEMTCA and seeks input from the public to assist DOE with its evaluation of whether to amend the current Federal energy conservation standards for commercial warm air furnaces. In making this determination, DOE must evaluate whether there is clear and convincing evidence that more-stringent national standards would result in significant additional energy savings, and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In determining whether an amended energy conservation standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to a proposed standard, determine whether the benefits of the standard exceed the burden of the proposed standard by, to the maximum extent practicable, considering the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the products that are likely to result from the standard;

(3) The total projected quantity of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the customer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

Additionally, when a type or class of covered equipment has two or more subcategories, DOE often specifies more than one standard level. DOE generally will adopt a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and which justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE generally considers such factors as the utility to the customer of the feature and other factors DOE deems appropriate. In a rule prescribing such a standard, DOE includes an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2)) DOE followed a similar process in the context of today's rulemaking.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal pre-emption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

B. Background

As noted above, the current energy conservation standards for commercial warm air furnaces were set by EPACT 1992. On October 21, 2004, DOE published a final rule in the **Federal Register** which adopted definitions for ''commercial warm air furnace'' and ''thermal efficiency,'' promulgated test procedures for this equipment, and recodified the energy conservation standards so that the standards are located contiguous with the test procedures in the Code of Federal Regulations (CFR). 69 FR 61916, 61917. In the same final rule, DOE incorporated by reference (see § 431.75) a number of industry test standards relevant to commercial warm air furnaces, including American National Standards Institute (ANSI) Standard Z21.47–1998, ''Gas-Fired Central Furnaces,'' for gas-fired furnaces, Underwriters Laboratories (UL) Standard 727–1994, ''Standard for Safety for Oil-Fired Central Furnaces,'' for oil-fired furnaces, provisions from Hydronics Institute (HI) Standard BTS–2000, ''Method to Determine Efficiency of Commercial Space Heating Boilers,'' to calculate flue loss for oil-fired furnaces, and the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Standard 103–1993, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' to determine the incremental efficiency of condensing furnaces under steady-state conditions. *Id.* Then in a final rule published in the **Federal Register** on May 16, 2012, DOE updated the test procedures for commercial warm air furnaces to match the procedures specified in ASHRAE Standard 90.1–2010, which referenced

[4] It is noted the AEMTCA inadvertently assigned two separate provisions to 42 U.S.C. 6313(a)(6)(C)(vi). The provision cited above is the one most relevant to this RFI.

ANSI Z21.47–2006, ''Gas-Fired Central Furnaces,'' for gas-fired furnaces and UL 727–2006, ''Standard for Safety for Oil-Fired Central Furnaces,'' for oil-fired furnaces. 77 FR 28928, 28987–88. The current Federal energy conservation standards, for this equipment are shown in Table 1.

TABLE 1—MINIMUM HEATING EFFICIENCY LEVELS FOR COMMERCIAL WARM AIR FURNACES

Equipment type	Input capacity	Minimum thermal efficiency level*	Compliance date
Gas-fired Commercial Warm Air Furnace	≥225,000 Btu/h	80%	1/1/1994
Oil-fired Commercial Warm Air Furnace	≥225,000 Btu/h	81%	1/1/1994

*At the maximum rated capacity (rated maximum input).

C. Rulemaking Process

DOE generally follows specific criteria when prescribing amended standards for covered ''ASHRAE equipment.'' (See generally 42 U.S.C. 6313(a)(6)(A)–(C).) When proposing to adopt more-stringent standard levels than those contained in ASHRAE Standard 90.1, DOE must evaluate whether clear and convincing evidence exists demonstrating that such amended standards would be technologically feasible and would result in significant additional energy savings, and then must consider whether amended standards are economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In assessing the appropriateness of amending the standards that are currently in place for commercial warm air furnaces, DOE plans to conduct its analyses in stages, with a positive result leading to a subsequent stage of the analysis. Under this approach, DOE would first evaluate whether more-stringent standards are technologically feasible and would lead to significant additional energy savings. If either of these prongs is not met, DOE would conduct no further analysis, because the statutory criteria for adoption of the more-stringent standard could not be met. However, if this initial assessment is positive, DOE plans to conduct in-depth analyses of the costs and benefits of the potential amended standards to determine whether such amended standards would be economically justified. The analyses would include the following steps: (1) Engineering; (2) energy use; (3) markups; (4) life-cycle cost and payback period; and (5) national impacts. If, after conducting those analyses, DOE reasons that there is a high likelihood that more-stringent standards would be economically justified, DOE will conduct downstream analyses including an analysis of: (1) Manufacturer impacts; (2) emission impacts; (3) utility impacts; (4) employment impacts; and (5) regulatory impacts. These analyses are the same ones DOE routinely applies when evaluating potential energy conservation standards for a given type of product or equipment. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis). As detailed throughout this RFI, DOE is publishing this notice as the first step in the analytical process and is specifically requesting input and data from interested parties to aid in the development of the technical analyses.

Due to the relatively short timeline for this rulemaking set forth by AEMTCA, DOE anticipates moving from this RFI directly to publication of either a determination that the commercial warm air furnaces standards do not need to be amended or a notice of proposed rulemaking for amended standards by the December 31, 2013 deadline.

II. Planned Rulemaking Analyses

In this section, DOE identifies a variety of issues on which it seeks input and data in order to aid its development of the technical and economic analyses to determine whether amended energy conservation standards may be warranted. In addition, DOE welcomes comments on other issues relevant to this rulemaking that may not specifically be identified in this notice.

A. Market Assessment

The market and technology assessment provides information about the commercial warm air furnace industry that will be used throughout the rulemaking process. For example, this information will be used to determine whether the existing equipment class structure requires modification based on the statutory criteria for setting such classes and to explore the potential for technological improvements in the design and manufacturing of such equipment. The Department uses qualitative and quantitative information to assess the past and present industry structure and market characteristics. For this rulemaking, DOE will use existing market materials and literature from a variety of sources, including industry publications, trade journals, government agencies, and the AHRI Directory of Certified Product Performance.[5] Additionally, DOE will consider conducting interviews with manufacturers to assess the overall market for commercial warm air furnaces.

The current standards for commercial warm air furnaces are specified for two equipment classes which are characterized by fuel type—(1) gas-fired commercial warm air furnaces with capacity of 225,000 Btu per hour or more and (2) oil-fired commercial warm air furnaces with capacity of 225,000 Btu per hour or more. As a starting point, DOE plans to use the existing equipment class structure. However, DOE will consider additional equipment classes for capacities or other performance-related features that inherently effect efficiency and justify the establishment of a different energy conservation standard. For instance, DOE may consider adopting equipment classes to differentiate between weatherized and non-weatherized commercial warm air furnaces, or DOE might also consider creating an equipment class for three-phase equipment with an input capacity less than 225,000 Btu/h. Each of these potential new equipment classes, and the rationale therefore, are discussed immediately below.

1. Potential New Product Classes

a. Weatherized and Non-Weatherized Commercial Furnaces

Based on a preliminary review of the commercial furnace market, DOE understands that almost all commercial warm air furnaces are installed outdoors on rooftops, but there is a very small segment of the commercial warm air furnace market that consists of units installed indoors. These indoor

[5] The AHRI Directory can be found at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx* (Last accessed on April 11, 2013).

commercial warm air furnace models appear to consist of all the oil-fired furnace models on the market and a few gas-fired furnace models. One of the indoor gas-fired model lines utilizes condensing heat exchanger technology to achieve a thermal efficiency of 90 percent.

Installation location (*i.e.,* indoors or outdoors) is significant, because it relates to the risk of condensate freezing. If the outdoor ambient temperature falls below freezing, the condensate can freeze and cause a backflow of condensate into the furnace's internal components and damage them. Although use of condensing technology may be possible in outdoor weatherized furnaces (see section II.B.1 for further discussion), condensing, non-weatherized heat exchanger technology has been demonstrated as technologically feasible for indoor applications in both the residential and commercial furnace markets. Condensing heat exchanger technology is easier to employ on non-weatherized furnaces, because they are installed indoors and there is little to no risk of condensate freezing since the appliance will be installed in or adjacent to a conditioned space. Even indoor furnaces installed in non-conditioned spaces have minimal chances of freezing in comparison to units that are completely outdoors, because they can be insulated from outdoor conditions. Thus, if indoor, non-weatherized commercial warm air furnace units were separated from outdoor, weatherized units in a new equipment class, there would be the potential for additional energy savings by utilizing condensing heat exchanger technology. Consequently, DOE has tentatively concluded that this is a performance-related feature that may justify separate equipment classes for these types of equipment.

Issue 1: DOE requests comment on the potential energy savings in creating a separate equipment classes for non-weatherized, indoor commercial warm air furnaces and weatherized, outdoor commercial warm air furnaces. DOE is also interested in learning about existing equipment that fall into this potential equipment class, as well as the market penetration of such equipment.

b. Three-Phase Equipment With an Input Capacity Less Than 225,000 Btu/h

EPCA defines a commercial ''warm air furnace'' as ''a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.'' (42 U.S.C. 6311(11)(A)) DOE notes that EPCA itself does not place a limit on the input capacity, specify a current phase type (single-phase or three-phase), or include any other similar criteria in the statutory definition that would restrict the scope of commercial warm air furnaces as covered equipment. However, when promulgating EPCA's initial energy conservation standards for commercial warm air furnaces, Congress only included energy conservation standards for commercial warm air furnaces with input ratings of 225,000 Btu/h or more. In light of the above, when establishing its regulations for commercial warm air furnaces in the CFR, DOE reiterated EPCA's definition of a ''warm air furnace'' and further defined a ''commercial warm air furnace'' as ''a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu per hour or more'' at 10 CFR 431.72. However, DOE is open to considering energy conservation standards for commercial warm air furnaces of different capacities as part of this rulemaking to consider amended standards.

EPCA and the CFR define a residential ''furnace'' as ''a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(a) Is designed to be the principal heating source for the living space of a residence;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(c) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(d) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces, gravity central furnaces, and electric central furnaces.''

(42 U.S.C 6291(23); 10 CFR 430.2)

Currently, DOE has promulgated energy conservation standards for commercial warm air furnaces (single-phase or three-phase) with an input greater than or equal 225,000 Btu/h (10 CFR 431.77), as well as standards for residential (single-phase) furnaces with an input less than 225,000 Btu/h (10 CFR 430.32(e)). Thus, there are presently no energy conservation standards for commercial three-phase warm air furnaces with an input capacity less than 225,000 Btu/h.

Commercial warm air furnaces are ''ASHRAE equipment,'' for which EPCA requires that DOE maintain efficiency standards at the efficiency levels set in ASHRAE Standard 90.1 or more-stringent levels. (42 U.S.C. 6313(a)(6)(A)) That is, if ASHRAE amends any efficiency level with respect to the equipment in ASHRAE Standard 90.1, DOE must either adopt that efficiency level or determine, with the support of clear and convincing evidence, that a more-stringent standard is warranted. *Id.* ASHRAE Standard 90.1–2010 lists efficiency levels for three-phase warm air furnaces in Table 6.8.1E, including for those with an input capacity less than 225,000 Btu/h. However, ASHRAE sets the efficiency level for warm air furnaces with an input capacity less than 225,000 Btu/h as a choice between 78 percent AFUE or 80 percent thermal efficiency for units that are not covered by DOE's standards for residential furnaces. The 78 percent AFUE rating is the current Federal efficiency standard for residential furnaces, and the 80 percent thermal efficiency rating is the current Federal efficiency standard for commercial gas-fired warm air furnaces.

Some residential furnace manufacturers offer both single-phase and three-phase versions of their furnaces, which appear (based on a review of product literature) to be otherwise exactly the same. Based on a review of market data, DOE notes that these three-phase furnaces are typically weatherized (*i.e.,* outdoor) units that generally have the same efficiency as their single-phase counterpart. In other cases, especially for three-phase furnaces paired with rooftop air-conditioning units with a cooling capacity greater than 5 tons, there are no single-phase counterparts. However, all of these models have a thermal efficiency of at least 80 percent, meeting or exceeding the current Federal efficiency standards for commercial warm air furnaces.

DOE notes that this rulemaking presents somewhat unique circumstances, namely where ASHRAE in the past had acted to adopt standards in ASHRAE Standard 90.1 for commercial warm air furnaces with an input capacity less than 225,000 Btu/h but DOE did not consider itself triggered at that time. The new statutory 6-year look-back review provisions for ASHRAE equipment (as codified at 42 U.S.C. 6313(a)(6)(C)(i) and (vi)) direct DOE to evaluate amended standards,

assuming that DOE has already been triggered and set a standard at a level no less than the ASHRAE level for the equipment in question. In this case, if DOE does not find that clear and convincing evidence exists to support adoption of a more-stringent standard, DOE will adopt one of the standard levels in ASHRAE Standard 90.1 as the Federal standard (AFUE or thermal efficiency).

Issue 2: DOE requests comment on the need to establish an equipment class for three-phase commercial warm air furnaces with an input capacity less than 225,000 Btu/h and the potential energy savings that could be achieved from creating such an equipment class.

Issue 3: DOE also requests comment on whether AFUE or thermal efficiency is an appropriate efficiency metric for three-phase commercial warm air furnaces with an input capacity less than 225,000 Btu/h.

B. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency. This relationship serves as the basis for the cost-benefit calculations for commercial customers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE will estimate the increase in manufacturer cost associated with increasing the efficiency of equipment above the baseline at various efficiency levels up to the maximum technologically feasible (''max-tech'') efficiency level for each equipment class. The baseline model is used as a reference point for each equipment class in the engineering analysis and the life-cycle cost and payback-period analyses. Typically, DOE would consider equipment that just meets the minimum energy conservation standard as baseline equipment. The vast majority of commercial warm air furnaces on the market achieve thermal efficiency ratings between 80 percent (the minimum efficiency standard) and 82 percent, inclusively, with two model lines achieving a thermal efficiency rating of 90 percent. In this engineering analysis, DOE is planning on analyzing the technology options and cost for equipment at 80 percent, 82 percent, and 90 percent thermal efficiencies.

Issue 4: DOE requests information on max-tech efficiency levels achievable in the current market.

Issue 5: DOE requests feedback on its proposed efficiency levels for analysis.

Issue 6: DOE requests information regarding the technology differences between commercial furnaces at 80 percent thermal efficiency ratings and more-efficient commercial furnaces.

In order to determine the cost-efficiency relationship, DOE anticipates drawing upon a variety of resources. DOE will use knowledge gained from previous rulemakings for similar equipment and consult manufacturers, technical experts, and product literature to estimate the cost of equipment with increased efficiency. DOE may also use reverse-engineering (or cost-assessment) techniques that include teardown analysis to assist in determining the cost-efficiency relationship. A teardown analysis (or ''physical teardown'') determines the production cost of a piece of equipment by disassembling the equipment ''piece-by-piece'' and estimating the material and labor cost of each component. The information from teardowns is then inputted into a cost model which fully accounts for labor, material, overhead, and depreciation to develop an estimate of the total manufacturer production cost (MPC). A supplementary method called a catalog teardown (or ''virtual teardown'') uses published manufacturer catalogs and supplementary component data to estimate the major physical differences between a piece of equipment that has been physically disassembled and another piece of similar equipment. These two methods could be used individually or in combination to help DOE determine the cost-efficiency relationship for commercial warm air furnaces. If DOE finds that sufficient information exists, based on previous analyses of similar products and in manufacturer literature and information, to estimate the costs using virtual teardowns in lieu of physical teardowns, DOE may choose to use only virtual teardowns, an approach which would yield the necessary information while saving time and resources.

Issue 7: DOE requests feedback on the possible approaches identified for the engineering analysis and on what the appropriate representative capacities and characteristics would be for each equipment class.

1. Condensing Weatherized Commercial Warm Air Furnaces

As briefly discussed in section II.A.1.a above, furnaces that utilize condensing heat exchanger technology extract more useable heat from the flue gas via a secondary heat exchanger. This extra heat extraction can cause water vapor to condense from the gas, hence the term ''condensing furnace.'' This technology has not become established in the commercial warm air furnace market because of challenges associated with removing acidic condensate from units installed outdoors, which is the majority of the commercial warm air furnace market. When the outdoor ambient temperature falls below freezing, the condensate leaving the drain pipe can freeze and cause a backflow of condensate into the furnace's internal components which can permanently damage the furnace, creating reliability issues. If the furnace becomes disabled while the outdoor ambient temperatures are below freezing and if the furnace is not repaired or replaced in a timely fashion, there could be a danger to building occupants due to exposure to low temperatures. Also, because this condensate is acidic, it may need to be treated with a neutralizer before discharging it into a sewer system, according to some local codes.

In researching the potential for rooftop condensate disposal methods, DOE identified two patents from major manufacturers that provided methods for condensate disposal in outdoor furnaces. DOE is also aware of one manufacturer that markets a dedicated outdoor air system with an optional heating section that utilizes a condensing heat exchanger to achieve a thermal efficiency over 90 percent, and which drains the condensate into the heated building space to prevent condensate freezing. The manufacturer also recommends completely draining the condensate drain system and secondary heat exchanger or applying heat tape to the drain system in order to prevent condensate freezing. DOE tentatively plans to examine condensing heat exchangers as a viable technology option for improving the thermal efficiency of commercial furnaces and analyze it as part of the engineering analysis.

Issue 8: DOE requests comment on the feasibility of using condensing heat exchanger technology in weatherized commercial warm air furnaces. DOE is also interested in comments on issues related to implementing identified condensing heat exchanger technologies in outdoor warm air furnaces, as well as costs associated with implementing a condensate drain into the building's space.

C. Markups Analysis

To carry out the life-cycle cost (LCC) and payback period (PBP) calculations, DOE needs to determine the cost to the commercial customer of baseline equipment that satisfies the currently applicable standards, and the cost of the more-efficient unit the customer would purchase under potential amended standards. This is done by applying a markup multiplier to the manufacturer's

selling price to estimate the commercial customer's price.

DOE intends to characterize several types of distribution channels to describe how the equipment passes from the manufacturer to the customer. The first distribution channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → General contractor → Consumer

In the second distribution channel, the manufacturer sells the equipment directly to the customer through a national account, which is characterized as follows:

Manufacturer → Consumer

In addition, DOE plans to consider cases when the contractor's sale of the equipment includes a start-up/check-out contract, in which cases the equipment markup is included in the contract costs.

Issue 9: DOE seeks input from stakeholders on whether the distribution channels described above are relevant for commercial warm air furnaces.

Issue 10: DOE seeks input on the percentage of equipment being distributed through the various types of distribution channels, and whether the share of equipment through each channel varies based on equipment capacity.

To develop markups for the parties involved in the distribution of the equipment, DOE utilized several sources including: (1) The Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2012 Profit Report[6] to develop wholesaler markups, (2) the 2005 Air Conditioning Contractors of America's (ACCA) financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry[7] to develop mechanical contractor markups, and (3) U.S. Census Bureau's 2007 Economic Census data[8] for the commercial and institutional building construction industry to develop general contractor markups.

Issue 11: DOE seeks recent data to establish the markups for the parties involved with the distribution of the equipment.

D. Energy Use Analysis

The purpose of the energy use analysis is to assess the energy requirements of equipment at different efficiencies in several building types that utilize the equipment. DOE intends to base the energy use analysis for the current effort on building simulation data or bin method. The building simulation will include building operation hourly profiles, which are based on building characteristics from the Energy Information Administration's 2003 Commercial Building Energy Consumption Survey (CBECS)[9] for the subset that uses the type of equipment covered by the standards. Each building will be assigned to a specific location, and the approach will capture variability in heating loads due to factors such as building activity, schedule, occupancy, local weather, and shell characteristics.

CBECS 2012 is currently in development but will not be available in time for this rulemaking. In addition, the 2003 CBECS sample may not include examples of recent innovations in building shell or window technologies that reduce cooling loads. Therefore, DOE intends on reviewing other data sets (*e.g.,* the technology penetration curves used in the latest National Energy Modeling System (NEMS)[10]), to determine whether a significant fraction of the current building population is not represented by CBECS 2003.

Issue 12: DOE requests comment or seeks input from stakeholders on the overall method to determine the equipment load profiles;

Issue 13: DOE requests comment or seeks input from stakeholders on the current distribution of equipment efficiencies in the building population;

Issue 14: DOE requests comment or seeks input from stakeholders on how equipment energy use for a given heating load shape scales as a function of capacity (*i.e.,* whether two commercial furnace units of a certain capacity use the same total heating energy as one commercial furnace unit of twice the capacity)

Issue 15: DOE requests comment or seeks input from stakeholders on whether building simulations developed for small and large commercial furnace equipment are applicable to very large equipment, and

Issue 16: DOE requests comment on the fraction of commercial warm air furnaces which are used in residential applications such as residential multi-family buildings as well as the fraction of residential furnaces that are used for commercial applications.

E. Life-Cycle Cost and Payback Period Analysis

The purpose of the LCC and PBP analysis is to analyze the effects of potential amended energy conservation standards on customers of commercial furnace equipment by determining how a potential amended standard affects their operating expenses (usually decreased) and their total installed costs (usually increased).

DOE intends to analyze the potential for variability and uncertainty by performing the LCC and PBP calculations on a representative sample of individual commercial buildings. DOE plans to utilize the sample of buildings developed for the energy use analysis[11] and the corresponding simulations results. Within a given building, one or more commercial furnace units may serve the building's space-conditioning needs, depending on the heating load requirements of the building. As a result, the Department intends to express the LCC and PBP results as the number of commercial furnace customers experiencing economic impacts of different magnitudes. DOE plans to model both the uncertainty and the variability in the inputs to the LCC and PBP analysis using Monte Carlo simulation and probability distributions. As a result, the LCC and PBP results will be displayed as distributions of impacts compared to the base case conditions.

Issue 17: DOE requests comment from stakeholders on the overall method that it intends on using to conduct the LCC and PBP analysis for commercial warm air furnaces.

Inputs to the LCC and PBP analysis are categorized as: (1) Inputs for establishing the purchase expense, otherwise known as the total installed cost, and (2) inputs for calculating the operating expense.

The primary inputs for establishing the total installed cost are the baseline

[6] *Heating, Air Conditioning & Refrigeration Distributors International 2012 Profit Report* (Available at: *http://www.hardinet.org/Profit-Report*) (Last accessed April 10, 2013).

[7] Air Conditioning Contractors of America (ACCA), *Financial Analysis for the HVACR Contracting Industry: 2005* (2005) (Available at: *https://http://www.acca.org/store/product.php?pid=142*) (Last accessed April 10, 2013).

[8] U.S. Census Bureau, *2007 Economic Census Data* (2007) (Available at: *http://www.census.gov/econ/*) (Last accessed April 10, 2013).

[9] Energy Information Administration (EIA), 2003 Commercial Building Energy Consumption Survey (CBECS) (Available at: *http://www.eia.gov/consumption/commercial/*) (Last accessed April 10, 2013).

[10] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration (EIA) documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* DOE/EIA–0581(2003). Each year, EIA uses NEMS to produce an energy forecast for the United States, the *Annual Energy Outlook* (*AEO*). For this analysis, DOE intends to use the version of NEMS based on *AEO 2013* (Available at: *http://www.eia.gov/forecasts/aeo/*).

[11] DOE plans to utilize the building types defined in CBECS 2003. Definitions of CBECS building types can be found at *http://www.eia.gov/emeu/cbecs/building_types.html.*

customer price, standard-level customer price increases, and installation costs. Baseline customer prices and standard-level customer price increases will be determined by applying markups to manufacturer price estimates. The installation cost is added to the customer price to arrive at a total installed cost. DOE intends to develop installation costs for commercial warm air furnaces using the most recent RS Means data available.

Issue 18: DOE seeks input on the approach and data sources it intends to use to develop installation costs, specifically, its intention to use the most recent RS Means Mechanical Cost Data.[12]

The primary inputs for calculating the operating costs are equipment energy consumption and power demand, equipment efficiency, electricity prices and forecasts, maintenance and repair costs, equipment lifetime, and discount rates. Both equipment lifetime and discount rates are used to calculate the present value of future operating expenses.

The equipment energy consumption is the site energy use associated with providing space-heating to the building. DOE intends to utilize calculation methodology to establish equipment energy use.

DOE intends to determine gas, oil, and electricity prices based on recent or current tariffs from a representative sample of utilities, as well as historical State commercial energy price data from the Energy Information Administration (EIA). This approach calculates energy expenses based on actual energy prices that customers are paying in different geographical areas of the country. In addition to using tariffs, DOE plans to use data provided in EIA's Form 861 data [13] to calculate commercial electricity prices, EIA's Natural Gas Navigator [14] to calculate commercial natural gas prices, and EIA's State Energy Data System (SEDS) [15] to calculate liquefied petroleum gas (LPG) and fuel oil prices. Future energy prices will likely be projected using trends from the EIA's 2013 *Annual Energy Outlook* (*AEO*).[16]

Issue 19: DOE seeks comment on its approach for developing energy prices. DOE seeks input on specific data sources available for collecting tariffs.

Maintenance costs are expenses associated with ensuring continued operation of the covered equipment over time. DOE intends to develop maintenance costs for its analysis using the most recent RS Means data available. DOE plans also to consider the cases when the equipment is covered by service and/or maintenance agreements.

Issue 20: DOE seeks input on the approach and data sources it intends to use to develop maintenance costs, specifically, its intention to use the most recent RS Means Facilities Maintenance & Repair Cost Data,[17] as well as to consider the cost of service and/or maintenance agreements.

Repair costs are expenses associated with repairing or replacing components of the covered equipment that have failed. DOE intends to assess whether repair costs vary with equipment efficiency as part of its analysis.

Issue 21: DOE seeks comment as to whether repair costs vary as a function of equipment efficiency. DOE also requests any data or information on developing repair costs.

Equipment lifetime is the age at which a unit of covered equipment is retired from service. The average equipment lifetime for commercial warm air furnaces is estimated by ASHRAE to be between 15 and 20 years.[18] Based on these data, DOE plans to use a 17.5 average lifetime for commercial warm air furnaces as the primary input for developing a Weibull probability distribution to characterize commercial warm air furnace lifetime.

Issue 22: DOE seeks comment on its approach of using a Weibull probability distribution to characterize equipment lifetime. DOE also requests any equipment lifetime data or information and whether equipment lifetime varies based on equipment class.

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE intends to derive the discount rates by estimating the cost of capital of companies that purchase commercial furnace equipment.

DOE measures LCC and PBP impacts of potential standard levels relative to a base case that reflects the likely market in the absence of amended standards. DOE plans to develop market-share efficiency data (*i.e.,* the distribution of equipment shipments by efficiency) for the equipment classes DOE is considering, for the year in which compliance with any amended standards would be required.

DOE also plans to assess the applicability of the ''rebound effect'' in the energy use analysis for commercial warm air furnaces. A rebound effect occurs when a piece of equipment that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement may not fully materialize. However, at this time, DOE is not aware of any information about the rebound effect for this equipment type.

Issue 23: DOE requests data on current efficiency market shares (of shipments) by equipment class, and also similar historic data. In particular, DOE seeks efficiency data for very large equipment.

Issue 24: DOE also requests information on expected trends in efficiency for commercial warm air furnaces over the next five years.

Issue 25: DOE seeks comments and data on the rebound effect that may be associated with more-efficient commercial warm air furnaces.

F. Shipment Analysis

DOE uses shipment projections by equipment class to calculate the national impacts of standards on energy consumption, net present value (NPV), and future manufacturer cash flows.

DOE intends to develop a shipments model for commercial warm air furnace equipment driven by historical shipments data. The accuracy of the shipments model is highly dependent on these historical shipments data, as the data are used not only to build up an equipment stock but also to calibrate the shipments model. If no shipments data are available, DOE plans to consider using 1994 shipments data from the Gas Appliance Manufacturers Association [19] (GAMA) (*i.e.,* 164,300 commercial warm air gas-fired furnace shipments),[20] and applying a trend

[12] RS Means, 2013 Mechanical Cost Data (Available at: *http://rsmeans.reedconstructiondata.com/60023.aspx*) (Last accessed April 10, 2013).

[13] Energy Information Administration (EIA), Survey form EIA–861—Annual Electric Power Industry Report (Available at: *http://www.eia.gov/electricity/data/eia861/index.html*) (Last accessed April 15, 2013).

[14] Energy Information Administration (EIA), *Natural Gas Navigator* (Available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*) (Last accessed April 15, 2013).

[15] Energy Information Administration (EIA), State Energy Data System (SEDS) (Available at: *http://www.eia.gov/state/seds/*) (Last accessed April 15, 2013).

[16] Energy Information Administration (EIA), 2013 *Annual Energy Outlook* (*AEO*) Full Version (Available at: *http://www.eia.gov/forecasts/aeo/*) (Last accessed April 15, 2013).

[17] RS Means, 2013 Facilities Maintenance & Repair Cost Data (Available at: *http://rsmeans.reedconstructiondata.com/60303.aspx*) (Last accessed April 10, 2013).

[18] American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), ASHRAE Handbook of HVAC Systems and Equipment (2008) p. 32.8.

[19] This organization has subsequently become the Air-Conditioning, Heating, and Refrigeration Institute (AHRI).

[20] Pacific Northwest National Laboratory (PNNL), Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment (April 2000)

Continued

based on estimated historical commercial warm air furnace stock derived from CBECS data.

Issue 26: DOE seeks historical shipments data for commercial warm air furnaces.

The shipments model will consider three market segments: (1) New commercial buildings acquiring equipment; (2) existing buildings replacing old equipment; and (3) existing buildings acquiring new equipment for the first time. Two stock categories are also considered: (1) equipment that has received only normal maintenance repairs; and (2) equipment that has had its useful life extended through additional repairs. To determine whether a customer would choose to repair rather than replace their commercial furnace equipment, the shipments model explicitly accounts for the combined effects of changes in purchase price, annual operating cost, and the value of commercial floor space on the purchase versus repair decision. Changes to the purchase price and operating costs due to amended energy conservation standards were the drivers for shipment estimates for the standards cases relative to the base case (*i.e.,* the case without amended standards).

Issue 27: DOE requests comment on the approach it intends on using to develop the shipments model and shipments forecasts for this rulemaking.

DOE intends to utilize the U.S. Census Bureau data [21] to establish historical new construction floor space, as well as historical stock floor space. The *Annual Energy Outlook* will be used to forecast both new construction and stock floor space. Together with historical equipment saturation data from CBECS, DOE will estimate shipments to the three market segments identified above. The utility function to estimate the repair versus replacement decision will be based on income per square foot data from the Building Owners and Managers Association (BOMA) Commercial Building Survey reports,[22] purchase price data estimated from the Bureau of Labor Statistics,[23] and operating cost data derived from the LCC and PBP analysis.

Issue 28: DOE seeks input on the approach and data sources it intends to use in developing the shipments model and shipments forecasts for this analysis.

G. National Impact Analysis

The purpose of the national impact analysis (NIA) is to estimate aggregate impacts of potential energy conservation standards at the national level. Impacts that DOE reports include the national energy savings (NES) from potential standards and the net present value (NPV) of the total consumer benefits.

To develop the NES, DOE calculates annual energy consumption for the base case and the standards cases. DOE calculates the annual energy consumption using per-unit annual energy use data multiplied by projected shipments.

To develop the national NPV of consumer benefits from potential energy conservation standards, DOE calculates annual energy expenditures and annual equipment expenditures for the base case and the standards cases. DOE calculates annual energy expenditures from annual energy consumption by incorporating forecasted energy prices, using shipment projections and average energy efficiency projections. DOE calculates annual equipment expenditures by multiplying the price per unit times the projected shipments. The difference each year between energy bill savings and increased equipment expenditures is the net savings or net costs.

A key component of DOE's estimates of NES and NPV are the equipment energy efficiencies forecasted over time for the base case and for each of the standards cases. To develop the various standards cases, DOE plans to develop market-share efficiency data (*i.e.,* data on the distribution of equipment shipments by efficiency) for the commercial furnace equipment classes DOE is considering. To estimate the impact that amended energy conservation standards may have in the year compliance becomes required, DOE has used ''roll-up'' and/or ''shift'' scenarios in its standards rulemakings. Under the ''roll-up'' scenario, DOE assumes: (1) Equipment efficiencies in the base case that do not meet the new or amended standard level under consideration would ''roll up'' to meet that standard level; and (2) equipment shipments at efficiencies above the standard level under consideration would not be affected. Under the ''shift'' scenario, DOE retains the pattern of the base-case efficiency distribution but re-orients the distribution at and above the new or amended minimum energy conservation standard. After DOE establishes the average efficiency for the assumed compliance date of a standard, it can estimate future efficiency by using the same rate of projected efficiency growth as for the base-case efficiency trend.

DOE intends to determine whether there is a rebound effect associated with more efficient commercial furnaces. If data indicate that there is a rebound effect, DOE will account for the rebound effect in its calculation of NES.

DOE has historically presented NES in terms of primary energy savings. On August 18, 2011, DOE published a final statement of policy in the **Federal Register** announcing its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281. While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE published an amended statement of policy, articulating its determination that NEMS is a more appropriate tool for this purpose. 77 FR 49701 (Aug. 17, 2012). Therefore, DOE intends to use the NEMS model to conduct FFC analyses. The method used to derive the FFC multipliers will be described in the technical support document (TSD).

Issue 29: In addition to historical efficiency data, DOE also requests information on expected trends in efficiency of commercial warm air furnaces over the long run.

Issue 30: DOE requests comment on whether it should pursue a roll-up or shift approach for potential commercial warm air furnace standards in the national impact analysis.

III. Public Participation

DOE invites all interested parties to submit in writing by June 3, 2013, comments and information on matters addressed in this notice and on any other matters relevant to DOE's consideration of potential amended energy conservation standards for commercial warm air furnaces.

(Available at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-13232.pdf*) (Last accessed April 10, 2013).

[21] U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table No 933—Construction Contracts—Value of Construction and Floor Space of Buildings by Class of Construction (Available at: *https://www.census.gov/compendia/statab/2011/cats/construction_housing/construction_indices_and_value.html*) (Last accessed April 10, 2013).

[22] Building Owners and Managers Association International (BOMA). Experience Exchange Report (2013) (Available at: *https://www.bomaeer.com/*) (Last accessed April 10, 2013).

[23] U.S. Department of Labor, Bureau of Labor Statistics. Producers Price Index: Industry: Refrigeration and Heating Equipment (Available at: *http://www.bls.gov/ppi/home.htm*) (Last accessed April 10, 2013).

After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments. These actions will be taken to aid in the development of a notice of proposed rulemaking (NOPR) for commercial warm air furnaces, if DOE determines that the statutory criteria have been met for amended energy conservation standards for such equipment.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0021.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

DOE considers public participation to be a very important part of the process for amending energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–10388 Filed 5–1–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 2013–07]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comments on whether to begin a rulemaking to revise its regulations in 11 CFR chapter I to address contributions and expenditures made by electronic means, such as by credit card, debit card, Internet-based payment processing, and text messaging; to eliminate or update references to outdated technologies; and similar issues. The Commission intends to review the comments received as it decides what revisions, if any, it will propose making to its rules.

DATES: Comments must be received on or before June 3, 2013. The Commission will determine at a later date whether to hold a public hearing on this Notice. If a hearing is to be held, the Commission will publish a notice in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at *http://www.fec.gov/fosers,* reference REG 2013–01. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of a commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is publishing this Advance Notice of Proposed Rulemaking to obtain comments on whether to revise its regulations at 11 CFR chapter I to address electronic transactions. Specifically, the Commission is considering whether to update its regulations to reflect electronic transactions, such as those made by debit cards, credit cards, gift cards, Internet-based payment processing, and online banking.[1] Such a rulemaking could address the receipt, deposit, accounting, recordkeeping, reporting, redesignation, and reattribution of electronic transactions, as well as matching funds, conduit activity, and contributions by text message. The Commission is also considering whether to revise its regulations by eliminating or updating references to outmoded technologies such as telegrams and fax machines.

As a general matter, the Commission seeks to ensure that the regulated community is able to take advantage of evolving technological innovations, while ensuring that the use of the technology is consistent with the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.,* as amended, (''the Act'') as well as the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.,* and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* (collectively, ''Chapters 95 and 96 of Title 26''). More specifically, here the Commission invites comments on whether and how it should update its regulations to take into account electronic transactions in a manner that provides sufficient guidance to the regulated community while reducing the need for serial revisions to reflect new and emerging technologies. Should regulations identify specific, approved means of engaging in electronic transactions? Or should regulations provide only general standards or criteria? Would the latter approach increase the risk of corruption, abuse, or circumvention of the Act, or Chapters 95 and 96 of Title 26, that may not be present with a bright-line rule that is less technologically flexible?

1. Updating Outmoded Regulations

The Commission is considering whether it should update its regulations to reflect recent technological advances. For example, certain regulations refer to technologies that are obsolete or seldom used today, such as a ''telegram'' (11

[1] *See* Rulemaking Priorities for 2012, Agenda Doc. 12–40 (May 24, 2012), *http://www.fec.gov/agenda/2012/mtgdoc_1240.pdf.*

CFR 104.6(c)(1)); ''typewriters'' (11 CFR 114.9(d)); and a ''carbon copy'' of a check (11 CFR 102.9(b)(2)(iii)). Other regulations refer to technologies now used only in limited circumstances, such as microfilm, facsimiles and computer tape. *See, e.g.,* 11 CFR 105.5 (microfilm copies provided by the Secretary of the Senate), 108.6 (microfilm or facsimile copies maintained by State officers). How should the Commission consider addressing these references to seldom used or obsolete technologies? What other, similar technological references in 11 CFR chapter I should the Commission consider updating or addressing in a rulemaking?

Several regulations refer to ''writing,'' ''signature,'' and ''printing'' requirements. The Commission is considering whether it should revisit these requirements to address electronic documents and records. For example, Commission regulations provide a means for a contributor to redesignate a contribution in ''a writing, signed by the contributor.'' 11 CFR 110.1(b), 110.2(b); *see also* 11 CFR 110.1(f) (designations), 110.1(k) (joint contributions and reattributions). Other regulations require documents to be ''signed'' before being filed with the Commission, without explicitly providing for the possibility of electronic signatures. *See, e.g.,* 11 CFR 111.4 (submission of complaints), 111.23 (designation of counsel), 300.37(d) (certifications by certain tax-exempt organizations). And some regulations apply to ''printed'' documents and communications without expressly addressing whether an electronic communication or an attachment to an electronic message, such as a portable document file or ''PDF,'' is ''printed.'' *See, e.g.,* 11 CFR 104.7 (''best efforts''), 110.11(c)(2) (disclaimers for printed communications). The Commission invites comments on whether and, if so, how it should consider updating these provisions.

Previously, the Commission concluded that a particular method of obtaining redesignations of contributions through a combination of electronic and traditional means met the written signature requirements in the redesignation provisions at 11 CFR 110.1(b)(5) and 110.2(b)(5), because that method ''provides a level of assurance as to the contributor's identity and intent comparable to that of a written signature.'' [2] At the same time, the Commission encouraged the use of innovations in technology to effectuate electronic redesignations and stated that it would consider, on a case-by-case basis, other methods of electronic redesignation.[3] If the Commission decides to revise the redesignation regulations to include electronic redesigations, what other methods should it consider? How should the Commission revise the redesignation rules and other regulations that require ''writings'' or signatures in order to minimize the need for serial revisions to adapt to new and emerging technologies?

The Commission is also considering whether to revise regulations that require certain communications to be mailed or hand-delivered to the Commission without providing for the possibility of electronic transmission. *See, e.g.,* 11 CFR 1.3 (Privacy Act requests), 112.1(e) (advisory opinion requests). Should the Commission update these regulations in light of current technology? If so, how?

2. Providing for Electronic Contributions and Transactions

The Act, Chapters 95 and 96 of Title 26, and Commission regulations generally refer to contributions by cash or check and to disbursements by check or draft without taking into account electronic transactions. Yet, according to the most recent triennial study conducted by the Federal Reserve System, payments by check have been decreasing and the ''number of noncash payments in the United States . . . increased at a compound annual rate of 4.6 percent'' from 2006 to 2009.[4] Electronic payments—that is, payments made by debit cards; credit cards; automated clearinghouses; and prepaid debit, credit, banking, and gift cards—''collectively exceed three-quarters of all noncash payments'' in the United States.[5]

Consistent with this trend, people increasingly use electronic means to contribute to political committees. A series of studies by the Pew Research Center of the 2006, 2008, and 2010 elections shows that the number of Internet users who make online contributions to candidates is increasing.[6] And among adults who donated to presidential candidates in the 2012 election, 50 percent donated online or via email.[7] As of September 2012—only a few months after the Commission had approved the use of text messaging to make contributions—ten percent of those who made contributions in the presidential race did so by ''text message from a cell phone or cell phone app.'' [8]

a. General Industry Practice

In light of these trends, the Commission is considering whether and how to revise its regulations to address electronic contributions and other transactions. As a preliminary matter, the Commission seeks information on general industry practice. How are commercial and consumer electronic transactions conducted generally? What are the industry standards, practices, and safeguards? How do vendors and third-party payment processors, such as PayPal, verify the payer's identity and attribute payments made by credit card? What types and forms of information are typically collected and maintained? What are the standard practices of third-party payment processors, such as PayPal or Square? What are the intermediate steps in processing electronic transactions? Do vendors or third-party payment processors typically process multiple recipients' funds through merchant accounts? What are the general timeframes for each step of these electronic processes? What are typical accounting practices with regard to merchant accounts? How do these practices differ, if at all, for prepaid debit, credit, banking and gift card transactions? How might practices change in light of emerging technologies? Are there other forms of electronic payment—such as by electronic wallet or swipe,[9] P2P (or

[2] *See* Interpretive Rule Regarding Electronic Contributor Redesignations, 76 FR 16233 (Mar. 23, 2011), *available at http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011–02.pdf.*

[3] *Id.*

[4] Federal Reserve System, *2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006–2009* 4 (Apr. 5, 2011), *available at www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.*

[5] *Id.*

[6] *See, e.g.,* Aaron Smith, Pew Internet and American Life Project, *The Internet and Campaign 2010* 21 (Mar. 17, 2011), *available at http://www.pewinternet.org/~/media//Files/Reports/2011/Internet%20and%20Campaign%202010.pdf* (finding that online contributions increased from three percent in the 2006 mid-term elections to four percent in 2010); Aaron Smith, Pew Internet and American Life Project, *The Internet's Role in Campaign 2008* 38–39 (Apr. 15, 2009), *available at http://www.pewinternet.org/~/media//Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf* (showing that nine percent made online contributions).

[7] Aaron Smith & Maeve Duggan, Pew Internet and American Life Project, *Presidential Campaign Donations in the Digital Age* (Oct. 25, 2012), *available at http://www.pewinternet.org/~/media/Files/Reports/2012/PIP_State_of_the_2012_race_donations.pdf* (finding further that 67 percent donated in person, over the telephone, or through the mail).

[8] *Id.*

[9] *See, e.g.,* Tara Siegel Bernard & Claire Cain Miller, *Swiping Is the Easy Part,* N.Y. Times, Mar. 24, 2011, at B1, *available at http://www.nytimes.com/2011/03/24/technology/24wallet.html?_r=0.*

person to person) platform,[10] mobile app, or Twitter hashtag [11]—that the Commission should consider if it decides to revise its rules?

b. Political Committee Practice

The Commission also seeks information on how political committees receive electronic contributions. Do political committees' practices differ from general commercial industry standards and practices? If so, how do they differ? Are political committees' practices comparable to those of nonprofit organizations that receive electronic donations at the Federal, State, or local level? What legal or practical considerations or constraints drive any such differences? What role, if any, should commercial industry standards and practices play in the Commission's consideration of requirements for electronic contributions received by political committees?

The Commission also seeks information on recordkeeping practices for electronic transactions. Commission regulations require political committees to maintain records of contributions and disbursements in ways that do not explicitly account for electronic transactions. *See, e.g.,* 11 CFR 102.9(a)(4) (requiring a ''photocopy of each check or written instrument or a digital image of each check or written instrument''), 102.9(b)(2) (requiring records such as cancelled checks, receipts, and carbon copies for disbursements over $200). Although the Commission has interpreted its recordkeeping regulations in the context of electronic transactions,[12] should the Commission revise these regulations to address expressly recordkeeping requirements for electronic transactions, such as, for example, requiring political committees that receive credit card contributions to maintain records with cardholders' names and credit card numbers? *See, e.g.,* 11 CFR 9034.2(b) (requirements for credit card contributions eligible for matching funds). Would this requirement be consistent with current industry practices? Would it need to be updated periodically to reflect changing technology? What should the recordkeeping requirements be for contributions made by prepaid debit, credit, banking and gift cards? Should the regulations take a less specific approach, like that in 11 CFR 104.14(b), which requires records to ''provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness''? Alternatively, are the current rules flexible enough to account for electronic recordkeeping practices without being revised?

Other recordkeeping considerations that arise in the context of electronic transactions relate to the use of merchant accounts. The Act and Commission regulations require all receipts to be deposited into a political committee's campaign depository account within ten days of receipt. 2 USC 432(h)(1); 11 CFR 103.3(a); *see also* 11 CFR 102.2(a)(1)(vi) (disclosure of campaign depositories). Although the Commission has previously opined on the treatment of merchant accounts in specific factual situations,[13] the Commission seeks information on the current uses of merchant accounts by political committees. Do contributions to political committees made via credit card or other electronic means customarily pass through a merchant account before being deposited by the committees in their campaign depositories? Should merchant accounts themselves be considered campaign depositories? Why or why not? How can an electronic contribution that is processed through a merchant account containing funds designated for multiple recipients be traced for recordkeeping, disclosure and audit purposes in a manner that provides assurances comparable to a ''paper trail''? [14]

In several recent advisory opinions, the Commission has addressed electronic contributions to political committees that are processed by incorporated commercial vendors or payment processors. In some of these opinions, the Commission concluded that the transaction was permissible under 11 CFR 110.6, which prohibits corporations from acting as conduits or intermediaries, because the corporation was acting as a vendor to the political committee recipient.[15] In other advisory opinions, the Commission concluded that the transaction was permissible because the corporations were providing services to the contributors.[16] Most recently, the Commission explained that some contributions made through electronic payment processors were not subject to 11 CFR 110.6 because they were not contributions to an intermediary earmarked for a candidate.[17] Should the Commission consider revising its regulations at 11 CFR 110.6 to address electronic contributions processed by incorporated commercial vendors and payment processors? If so, what approach should the regulations take? Should the regulations also address how to treat fees paid to commercial vendors and payment processors to process electronic contributions?

Other regulations that do not expressly address electronic contributions also have been interpreted by the Commission to apply to electronic transactions. In Advisory Opinion 1990–04 (American Veterinary Medical Association), for example, the Commission approved credit card transactions under 11 CFR 102.6, which addresses combined payments of contributions and dues by check. The Commission also has construed 11 CFR 102.8, which applies when a contribution is received, and 11 CFR 110.1(b)(6) and 110.2(b)(6), which describe when a contribution is made, in the context of electronic contributions.[18] Should the Commission

[10] *See, e.g.,* Fed. Fin. Inst. Examination Council, *Online Person-to-person (P2P), Account-to-Account Payments and Electronic Cash, IT Examination HandBook InfoBase, http://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/online-person-to-person-(p2p),-account-to-account-(a2a)-payments-and-electronic-cash.aspx* (last visited Feb. 26, 2013).

[11] *See, e.g.,* Heather Kelly, *Twitter and Amex to Let You Pay with a Hashtag,* CNN (Feb. 12, 2013), *http://www.cnn.com/2013/02/11/tech/social-media/twitter-hashtag-purchases; see also https://chirpify.com/* (social media purchase platform).

[12] *See* Advisory Opinion 1995–09 (NewtWatch) (approving a proposal to maintain records supporting electronic fund transfers); Advisory Opinion 1993–04 (Cox); Advisory Opinion 1994–40 (Alliance for American Leadership); *see also* Federal Election Commission, *Campaign Guide: Congressional Candidates and Committees* 75–76 (Aug. 2011), *available at http://www.fec.gov/pdf/candgui.pdf* (describing recordkeeping for credit card disbursements).

[13] *See, e.g.,* Advisory Opinion 1999–22 (Aristotle Publishing) (concluding that political committees receiving credit card contributions through merchant account should disclose that account as a campaign depository).

[14] *See, e.g.,* Advisory Opinion 1993–04 (Cox), n. 2 (discussing recordkeeping and ''paper trails''); Advisory Opinion 1999–22 (Aristotle Publishing) (approving a vendor's use of a single merchant ID to process contributions subsequently forwarded to multiple political committees).

[15] Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2004–19 (DollarVote); *see also* Advisory Opinion 2012–09 (Points for Politics).

[16] Advisory Opinion 2011–06 (Democracy Engine); Advisory Opinion 2006–08 (Brooks); *see also* Advisory Opinion 2011–19 (GivingSphere).

[17] Advisory Opinion 2012–22 (skimmerhat); *but see* Advisory Opinion Request 2012–08 (Repledge) (no advisory opinion issued).

[18] Advisory Opinion 2012–35 (Global Transaction Services Group, Inc.); Advisory Opinion 2008–08 (Zucker); *see also* Advisory Opinion 2012–26 (Cooper for Congress, ArmourMedia, Inc., and m-Qube, Inc.); Advisory Opinion 2012–09 (Points for Politics); Federal Election Commission, *Campaign Guide: Congressional Candidates and Committees* 23, 74 (Aug. 2011), *available at http://www.fec.gov/*

Continued

revise these regulations to address electronic contributions expressly? If so, should the regulations take the same approach as those taken previously? If not, why not, and what approach should they take instead?

Recently, the Commission approved the use of text messaging to process contributions in a series of advisory opinions.[19] Should the Commission amend its regulations to address contributions made by text message? If so, should the regulations take the same approach as the advisory opinions? Should any revised regulations also address issues that were not addressed in the advisory opinions, such as how political committees should report the receipt of contributions made by text message? What related issues should the Commission address?

The Commission is also considering whether and, if so, how to revise the paper-oriented definitions of ''money'' and determinations of ''disbursement'' in its regulations. For example, the regulatory definition of ''contribution'' defines ''money'' as ''currency * * *, checks, money orders, or any other negotiable instruments payable on demand.'' 11 CFR 100.52(c); *see also* 11 CFR 100.111(d) (similarly defining ''money'' in the definition of ''expenditure''), 102.10 (requiring disbursements to be made by check or ''similar draft'' drawn on accounts established at the committee's campaign depository). In several advisory opinions, the Commission has interpreted the term ''similar draft'' to include electronic disbursements.[20] Should the Commission revise its regulations to provide expressly that contributions, expenditures, and disbursements include funds transferred electronically? Should any revised regulations take the same approach as the advisory opinions? If not, why not, and what approach should they take instead?

Finally, the Commission is considering whether to revise its regulations that expressly apply only to cash contributions so that they also expressly apply to certain electronic contributions. For example, cash contributions in excess of $100 are prohibited. 11 CFR 110.4. The Commission seeks comments on whether prepaid debit, credit, banking, and gift cards are functionally the same as cash. If so, should the regulation be revised to prohibit contributions in excess of $100 made by prepaid debit, credit, banking, and gift cards? If not, why not?

c. Rulemaking vs. *Other Guidance*

The Commission seeks comments on whether a rulemaking is the best way for it to address questions raised by the receipt of electronic contributions, and the making of electronic disbursements, by political committees. As noted above, the Commission to date has provided guidance on electronic transactions largely through advisory opinions, interpretive rules, and campaign guides. Are these the best ways for the Commission to provide guidance on the subject in light of rapidly evolving technologies, or would rules on the subject also be helpful? How should the Commission craft regulations in order to minimize the need for serial revisions in the face of new and emerging technologies? Given the speed at which technology has been advancing, the Commission welcomes comments suggesting general regulatory criteria or standards that are flexible and adaptable enough to apply to new or emerging technology or business arrangements.

3. Other Electronic Modernization Issues

The Commission welcomes comments, including any pertinent data, concerning any electronic modernization issues that are not addressed in this notice and that relate to the Commission's administration of the Act or Chapters 95 and 96 of Title 26.

Dated: April 25, 2013.

On behalf of the Commission.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–10326 Filed 5–1–13; 8:45 am]

BILLING CODE 6715–01–P

pdf/candgui.pdf (describing when a credit card contribution is ''received'').

[19] *See* Advisory Opinion 2012–17 (Red Blue T LLC, ArmourMedia, Inc., and m-Qube, Inc.); Advisory Opinion 2012–26 (Cooper for Congress, ArmourMedia, Inc., and m-Qube, Inc.); Advisory Opinion 2012–28 (CTIA—The Wireless Association); Advisory Opinion 2012–30 (Revolution Messaging, LLC); Advisory Opinion 2012–31 (AT&T Inc.).

[20] *See, e.g.,* Advisory Opinion 1993–04 (Cox) (approving a ''computer driven billpayer service'' that included the disbursement of funds by electronic transfer); Advisory Opinion 1982–25 (Sigmund) (concluding that a wire transfer qualifies as a ''similar draft'').

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB–2013–0010]

RIN 3170–AA37

Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedure Act (Regulation X) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: This rule proposes amendments to some of the final mortgage rules issued by the Bureau of Consumer Financial Protection (Bureau) in January of 2013. These amendments clarify or correct provisions on the relation to State law of Regulation X's servicing provisions; the small servicer exemption from certain servicing rules; the use of government-sponsored enterprise and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status; and the determination of debt and income for purposes of originating qualified mortgages.

DATES: Comments must be received on or before June 3, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2013–0010 or RIN 3170–AA37, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Whitney Patross, Attorney; Joseph Devlin and Richard Arculin, Counsels; Marta Tanenhaus and R. Colgate Selden, Senior Counsels; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Public Law 111–203, 124 Stat. 1376 (2010) (2013 Title XIV Final Rules). On January 10, 2013, the Bureau issued Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (2013 ATR Final Rule).[1] On January 17, 2013, the Bureau issued Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) (2013 RESPA Servicing Final Rule) and Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z) (2013 TILA Servicing Final Rule) (together, 2013 Mortgage Servicing Final Rules).[2] This publication proposes several amendments to those rules. These amendments clarify or correct provisions on (1) The relation to State law of Regulation X's servicing provisions; (2) the small servicer exemption from certain of the new servicing rules; (3) the use of government-sponsored enterprise (GSE) and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage (QM) status; and (4) the determination of debt and income for purposes of originating QMs. In addition to these four proposed revisions, which are discussed more fully below, the Bureau is also proposing certain technical corrections to the regulations with no substantive change intended.

First, the Bureau is proposing to amend the commentary to Regulation X to clarify that under the preemption provisions, that regulation does not occupy the field of regulation of the practices covered by RESPA or Regulation X, including with respect to mortgage servicers or mortgage servicing. The proposal would also redesignate § 1024.13, the Regulation X preemption provision, as § 1024.5(c).

Second, the Bureau is proposing to clarify the scope and application of an exemption for small servicers that is set forth in § 1026.41, the periodic statement provision, and incorporated by cross-reference in certain provisions of Regulation X. The proposal would clarify which mortgage loans to consider in determining small servicer status and the application of the small servicer exemption with regard to servicer/affiliate and master servicer/subservicer relationships. Further, the Bureau is proposing that three types of mortgage loan not be considered in determining small servicer status: mortgage loans voluntarily serviced for an unaffiliated entity without remuneration, reverse mortgages, and mortgage loans secured by a consumer's interest in timeshare plans. The Bureau is also proposing other minor changes involving the small servicer exemption.

Third, the Bureau is proposing to revise comment 43(e)(4)–4 to clarify what standards a creditor must meet when relying on a written guide or the automated underwriting system of one of the GSEs, U.S. Department of Housing and Urban Development (HUD), Veterans Administration (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS) to determine qualified mortgage status under § 1026.43(e)(4). The proposed comment clarifies that a creditor is not required to satisfy certain mandates concerning loan delivery to the entities and other requirements that are wholly unrelated to assessing a consumer's ability to repay the loan. The proposed comment also specifies that a creditor relying on approval through an entity's automated underwriting system to establish qualified mortgage status must also meet the conditions on approval that are generated by that same system.

The Bureau further is proposing revisions to comment 43(e)(4)–4 to clarify that a loan meeting eligibility requirements provided in a written agreement between the creditor and one of the GSEs, HUD, VA, USDA, or RHS is also eligible for purchase or guarantee by the GSEs or insured or guaranteed by the agencies for the purposes of § 1026.43(e)(4). Thus, such loans could be qualified mortgages.

The Bureau is also proposing new comment 43(e)(4)–5, which provides that a repurchase or indemnification demand by the GSEs, HUD, VA, USDA, or RHS is not dispositive for ascertaining qualified mortgage status. The comment provides two examples to illustrate the application of this guidance.

Fourth, the Bureau is proposing changes to appendix Q of Regulation Z to facilitate compliance and ensure access to credit by assisting creditors in determining a consumer's debt-to-income ratio (DTI) for the purposes of § 1026.43(e)(2), the primary qualified mortgage provision. The Bureau is proposing changes to address compliance challenges raised by stakeholders, as well as technical and wording changes for clarification purposes.

II. Background

A. Title XIV Rulemakings Under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and, under sections 1061 and 1100A, generally consolidated the rulemaking authority for Federal consumer financial laws, including TILA and RESPA, in the Bureau.[3] At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to and exacerbated the crisis. Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[4] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition.

On January 10, 2013, the Bureau issued the 2013 ATR Final Rule, Escrow Requirements Under the Truth in Lending Act (Regulation Z) (2013 Escrows Final Rule),[5] and High-Cost

[1] 78 FR 6407 (Jan. 30, 2013).

[2] 78 FR 10695 (Feb. 14, 2013) (Regulation X), 78 FR 10901 (Feb. 14, 2013) (Regulation Z).

[3] Sections 1011 and 1021 of the Dodd-Frank Act, in title X, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603. Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

[4] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

[5] 78 FR 4726.

Mortgages and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) (2013 HOEPA Final Rule).[6] On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. On January 18, 2013, the Bureau issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z)[7] (issued jointly with other agencies) and Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B) (2013 Appraisals Final Rule).[8] On January 20, 2013, the Bureau issued Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z) (2013 Loan Originator Final Rule).[9] Most of these rules will become effective on January 10, 2014.

Concurrent with the 2013 ATR Final Rule, on January 10, 2013, the Bureau issued Proposed Amendments to the Ability-to-Repay Standards Under the Truth in Lending Act (Regulation Z) (2013 ATR Concurrent Proposal).[10] The 2013 ATR Concurrent Proposal would provide exemptions for certain nonprofit creditors and certain homeownership stabilization programs, an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors, and specific rules for the inclusion of loan originator compensation in the points and fees calculation for QMs. The Bureau is currently in the process of considering comments received and finalizing this proposal.

B. Implementation Initiative for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of its new mortgage rules (Implementation Plan),[11] under which the Bureau would work with the mortgage industry to ensure that the new rules can be implemented accurately and expeditiously. The Implementation Plan included (1) Coordination with other agencies; (2) publication of plain-language guides to the new rules; (3) publication of additional corrections and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This proposal is the second issuance of additional corrections and clarifications of the new rules. The purpose of these updates is to address important questions raised by industry, consumer groups, or other agencies. Priority for this second set of updates has been given to issues that are important to a large number of stakeholders and that critically affect mortgage companies' implementation decisions. In June, the Bureau plans to issue additional proposed clarifications to the new mortgage rules, including the servicing rules touched on here and the 2013 Loan Originator Final Rule. We will also be issuing final versions of the recently published Escrows proposal and this issuance, after considering the comments we receive.[12]

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under RESPA, TILA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Federal Reserve Board (Board). The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[13] Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of HUD's consumer protections functions relating to RESPA.[14] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with RESPA, TILA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[15]

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which includes its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under 105(a) such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is the purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, and abusive. Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the

[6] 78 FR 6855.

[7] 78 FR 10367.

[8] 78 FR 7215.

[9] 78 FR 11279.

[10] 78 FR 6622.

[11] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

[12] The Bureau also has received some questions that it does not intend to address through further rulemaking because they are answered by the final rules as adopted. For example, the Bureau has been asked whether residual income considerations can have any impact on the status of a qualified mortgage, specifically, whether a creditor's failure to verify adequate residual income can be raised to refute the safe harbor for qualified mortgages that are not higher-priced covered transactions, under § 1026.43(e)(1)(i). The Bureau believes the rule is already clear that residual income is relevant only to rebutting the presumption of compliance for qualified mortgages that are higher-priced covered transactions, under § 1026.43(e)(1)(ii)(B), and therefore has no effect on the safe harbor status of qualified mortgages that are not higher-priced covered transactions.

[13] 12 U.S.C. 5581(a)(1).

[14] Public Law 111–203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

[15] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA), Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining ''enumerated consumer laws'' to certain subtitles and provisions of Title XIV).

Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. Accordingly, the Bureau has authority to issue regulations pursuant to RESPA, TILA, title X, and the enumerated subtitles and provisions of title XIV.

In addition to constitute a qualified mortgage a loan must meet ''any guidelines or regulations established by the Bureau relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine are relevant and consistent with the purposes described in [TILA section 129C(b)(3)(B)(i).]'' The Dodd Frank Act also provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; or are necessary and appropriate to effectuate the purposes of the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance with TILA sections 129B and 129C. TILA section 129C(b)(3)(B)(i), 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) provides the Bureau authority to prescribe regulations to carry out the purposes of the qualified mortgage provisions, such as to ensure that responsible m affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 128C. TILA section 129C(b)(3)(A), 15 U.S.C. 1639c(b)(3)(A).

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' 12 U.S.C. 5512(b)(1). Title X of the Dodd-Frank Act is a Federal consumer financial law. Accordingly, the Bureau is exercising its authority under the Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of RESPA, TILA, title X, and the enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and prevent evasion of those laws.

The Bureau is proposing to amend certain rules finalized in January, 2013 that implement a number of Dodd-Frank Act provisions. In particular, the Bureau is proposing to clarify or amend regulatory provisions and associated commentary adopted by the 2013 ATR Final Rule,[16] the 2013 TILA Servicing Final Rule,[17] and the 2013 RESPA Servicing Final Rule.[18] This proposed rule relies on the broad rulemaking and exception authorities specifically granted to the Bureau by RESPA, TILA, and title X of the Dodd-Frank Act.

IV. Section-by-Section Analysis

A. Regulation X

Subpart A—General Provisions

The Bureau is proposing a technical amendment to the heading for Subpart A of Regulation X from ''Subpart A—General'' to ''Subpart A—General Provisions'' to conform the heading in the text of the regulation to the heading set forth in the corresponding commentary.

Section 1024.5 Coverage of RESPA

The Bureau is proposing to redesignate § 1024.13 as § 1024.5(c). Section 1024.13, ''Relation to State laws,'' sets forth rules regarding the relationship of the requirements in RESPA and Regulation X to requirements established pursuant to State law. In the 2013 RESPA Servicing Final Rule, the Bureau divided Regulation X into subparts and § 1024.13 is located in new ''Subpart B—Mortgage Settlement and Escrow Accounts.'' The provisions of § 1024.13(a) are intended to apply with respect to all of Regulation X. Because § 1024.13 applies for all sections of Regulation X, the Bureau is redesignating § 1024.13 as § 1024.5(c), located within ''Subpart A—General Provisions.'' Further, the Bureau is proposing to remove and reserve § 1024.13.

The Bureau is further proposing to add commentary for proposed § 1024.5(c) to make clear that Regulation X does not create field preemption. Since the Bureau issued the 2013 RESPA Servicing Final Rule, it has received inquiries as to whether the Bureau's mortgage servicing rules result in preemption of the field of mortgage servicing regulation. The Bureau addressed this question in the preamble to the final rule, stating that ''the Final Servicing Rules generally do not have the effect of prohibiting State law from affording borrowers broader consumer protection relating to mortgage servicing than those conferred under the Final Servicing Rules.'' [19] The preamble further stated that, although ''in certain circumstances, the effect of specific requirements of the Final Servicing Rules is to preempt certain limited aspects of state law'' in general, ''the Bureau explicitly took into account existing standards (both State and Federal) and either built in flexibility or designed its rules to coexist with those standards.'' [20]

Because the Bureau has continued to receive questions on this issue, the Bureau believes it is appropriate to propose commentary to clarify the scope of proposed § 1024.5(c) and expressly address concerns about field preemption. Consistent with the preamble to the 2013 RESPA Servicing Final Rule, proposed comment 5(c)(1)-1 would state that State laws that are in conflict with the requirements of RESPA or Regulation X may be preempted by RESPA and Regulation X. Proposed comment 5(c)(1)-1 would state further that nothing in RESPA or Regulation X, including the provisions in subpart C with respect to mortgage servicers or mortgage servicing, should be construed to preempt the entire field of regulation of the covered practices. The Bureau believes that this proposed addition to the commentary would clarify that RESPA and Regulation X do not effectuate field preemption of States' regulation of mortgage servicers or mortgage servicing. The comment also makes clear that RESPA and Regulation X do not preempt State laws that give greater protection to consumers than they do.

The Bureau requests comment regarding the addition of the proposed commentary, including whether further clarification regarding the preemption effects of RESPA and Regulation X is necessary or appropriate.

B. Regulation Z

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(a) In General

41(a)(1) Scope

Section 1026.41(a)(1), which was established by the 2013 TILA Servicing Final Rule, sets forth the scope of mortgage loans subject to the periodic statement requirements. The mortgage loans covered by the rule are closed-end consumer credit transactions secured by

[16] 78 FR 6408 (January 30, 2013).

[17] 78 FR 10902 (February 14, 2013).

[18] 78 FR 10696 (February 14, 2013).

[19] 78 FR 10706.

[20] *Id.* (specifically identifying the National Mortgage Settlement and the California Homeowner Bill of Rights).

a dwelling, subject to certain exemptions set forth in § 1026.41(e). Section 1026.41(a)(1) further states that, for purposes of § 1026.41, ''[s]uch transactions are referred to as *mortgage loans.*''

The proposed revision would clarify the rule by replacing the indefinite reference ''such transactions'' in § 1026.41(a)(1) with a reiteration of the loans to which the rule applies, that is, closed-end consumer credit transactions secured by a dwelling. This revision clarifies which transactions are considered ''mortgage loans'' for purposes of § 1026.41.

The Bureau believes that this change also would reduce uncertainty about which loans to consider in determining a servicer's eligibility for one of the exemptions under § 1026.41(e), the small servicer exemption. Section 1026.41(e)(4)(ii) defines a small servicer as a servicer that services 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee.[21] The proposed text clarifies that, in general, a servicer determines whether it is a small servicer by considering the closed-end consumer credit transactions secured by a dwelling that it services. This includes coupon book loans, which are exempt from some of the requirements of the periodic statement rule. However, pursuant to proposed § 1026.41(e)(4)(iii), reverse mortgages and transactions secured by consumers' interests in timeshares, which are exempt from the periodic statement requirements, are excluded from consideration for purposes of determining small servicer status.

41(e) Exemptions

41(e)(4) Small Servicers

41(e)(4)(ii) Small Servicer Defined

For the reasons set forth in the 2013 Servicing Final Rules,[22] the Bureau determined that it was appropriate to exempt small servicers from certain mortgage servicing requirements. Specifically, small servicers, as defined by § 1026.41(e)(4), are exempt from the Regulation Z requirement to provide periodic statements for residential mortgage loans [23] and, in Regulation X, from (1) Certain requirements relating to obtaining force-placed insurance,[24] (2) the general servicing policies, procedures, and requirements,[25] and (3) certain requirements and restrictions relating to communicating with borrowers about, and evaluation of applications for, loss mitigation options.[26]

The Bureau is proposing to clarify the scope and application of the small servicer exemption. Determination of a servicer's status as a small servicer, and thus its eligibility for the small servicer exemption, is set forth in § 1026.41(e)(4). As set forth above, this standard is applicable by cross-reference to certain provisions of Regulation X. Regulation X applies to ''federally related mortgage loans,'' which excludes certain loans that are ''mortgage loans'' as defined by Regulation Z § 1026.41(a)(1). The proposed revision would clarify that, to qualify for the small servicer exemption applicable to either rule, the servicer must first qualify as a small servicer under § 1026.41(a)(1)—and that determination is based on closed-end consumer credit transactions secured by a dwelling. This Regulation Z standard applies regardless of whether or not the loans considered are subject to the requirements of Regulation X. The Bureau notes that, although some mortgage loans not subject to coverage under Regulation X count for purposes of determining eligibility as a small servicer, servicing such loans under Regulation X rules would not be required. Thus, a servicer that services 5,000 *federally related mortgage loans,* as defined by Regulation X, may service more than 5,000 *mortgage loans,* as defined by Regulation Z § 1026.41(a)(1). In this case, because the servicer's loans exceed the 5,000 mortgage loan limit, the servicer is not a small servicer and, thus, would not qualify for the small servicer exemption with regard to Regulation Z and Regulation X. However, the servicer would not have to comply with Regulation X requirements for those mortgage loans counted for purposes of determining small servicer eligibility but which are not federally related mortgage loans. Accordingly, by clarifying how a servicer determines whether it qualifies as a small servicer with regard to Regulation Z, this proposal also would clarify how a servicer determines whether it qualifies for the small servicer exemptions from the mortgage servicing requirements in Regulation X.

The Bureau is proposing to amend the commentary to § 1026.41(e)(4)(ii) to identify specifically which mortgage loans are considered for purposes of determining eligibility for the small servicer exemption. Specifically, the Bureau proposes to add comment 41(e)(4)(ii)–1 to clarify that, in general and pursuant to § 1026.41(a)(1), the mortgage loans considered in determining qualification for the small servicer exemption are closed-end consumer credit transactions secured by a dwelling. Proposed comment 41(e)(4)(ii)–1 highlights that, pursuant to § 1026.41(e)(4)(iii), certain closed-end consumer credit transactions secured by a dwelling are not considered in determining status as a small servicer, as discussed further below in connection with proposed § 1026.41(e)(4)(iii).

The Bureau requests comments and data regarding whether proposed comment 41(e)(4)(ii)–1 appropriately clarifies the scope of mortgage loans that must be considered for determining if a servicer qualifies as a small servicer. The Bureau specifically requests comment and data regarding whether any servicers service a significant number of closed-end consumer credit transactions secured by a dwelling, which are subject to Regulation Z, but service significantly fewer ''federally related mortgage loans,'' which are subject to Regulation X. For example, the Bureau requests comment and data regarding whether any servicers would not be considered a small servicer if the small servicer exemption is based on whether a servicer services 5,000 or fewer closed end consumer credit transactions secured by a dwelling, but would be a small servicer if the small servicer exemption is based on whether a servicer services 5,000 or fewer ''federally related mortgage loan[s],'' as that term is defined in 12 CFR 1024.2.[27]

The Bureau also is proposing to amend § 1026.41(e)(4)(ii)(A). Proposed § 1026.41(e)(4)(ii)(A) would clarify that, for purposes of determining small servicer status, a servicer considers the mortgage loans serviced by the servicer *together with any mortgage loans serviced by any affiliates.* Section 1026.41(e)(4)(iii) states that small servicer status is determined by counting ''the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the

[21] Housing Finance Agencies are deemed small servicers under § 1026.41(e)(4)(ii)(B) regardless of loan count and loan ownership status.

[22] *See, e.g.,* 78 FR 10718–10720.

[23] 12 CFR 1026.41(e).

[24] 12 CFR 1024.17(k)(5).

[25] 12 CFR 1024.30(b)(1).

[26] *Id.*

[27] One example of such a servicer would be a servicer that services 10,000 construction loans, which are not considered ''federally related mortgage loans'' pursuant to 12 CFR 1024.2, and 100 mortgage loans that are considered ''federally related mortgage loans'' pursuant to 12 CFR 1024.2. Such servicer would be considered to service 10,100 closed-end consumer credit transactions secured by a dwelling and would not qualify for the small servicer exemption. However, only the 100 federally related mortgage loans serviced by the servicer would be subject to the mortgage servicing requirements set forth in Regulation X pursuant to 12 CFR 1024.31.

remainder of the calendar year.'' To avoid any risk of inconsistency, the Bureau believes it is appropriate to amend § 1026.41(e)(4)(ii)(A) to conform the language to § 1026.41(e)(4)(iii) by adding the clause ''together with any affiliates'' such that a small servicer is a servicer that ''services, *together with any affiliates,* 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee.'' This change more fully conforms the language of § 1026.41(e)(4)(ii)(A) with the language of § 1026.41(e)(4)(iii) but does not change the meaning of the small servicer exemption.

The Bureau also is proposing to amend the comments to § 1026.41(e)(4)(ii)(A). Specifically, comment 41(e)(4)(ii)–1 would be redesignated as comment 41(e)(4)(ii)–2 and would be amended to clarify several elements set forth in the 2013 TILA Servicing Final Rule. First, it would clarify that there are two concurrent requirements for determining whether a servicer is a small servicer. Second, it would explain that the mortgage loans considered in making this determination are those serviced by the servicer as well as by its affiliates. Finally, it would clarify that the second requirement of the small servicer test, that a servicer must be either the ''creditor or assignee'' of the mortgage loans it services, means that the servicer must either currently own or have originated the mortgage loans. The comment also would provide examples to illustrate these points.

Proposed comment 41(e)(4)(ii)–1 would set forth the two requirements for determining if a servicer is a small servicer and would clarify that both requirements apply to the mortgage loans serviced by the servicer as well as by its affiliates. The comment would set forth both requirements: (1) A servicer, together with its affiliates, must service 5,000 or fewer mortgage loans, and (2) the servicer must only service mortgage loans for which the servicer (or an affiliate) is the creditor or assignee. Proposed comment 41(e)(4)(ii)–2 would further clarify that to be the ''creditor or assignee'' of a mortgage loan, the servicer (or an affiliate) must either currently own the mortgage loan or must have been the entity to which the mortgage loan was initially payable (that is, the originator of the mortgage loan). A servicer that only services such mortgage loans may qualify as a small servicer so long as the servicer also only services 5,000 or fewer mortgage loans. The Bureau believes that this clarification provides a helpful alternative way of expressing the requirement stated in the rule that the servicer or affiliate must also be the creditor or assignee of a mortgage loan.

Proposed comment 41(e)(4)(ii)–2 further would provide examples of specific circumstances demonstrating these requirements. The first example illustrates the loan count requirement of the small servicer test and the effect affiliation has on that requirement. Proposed comment 41(e)(4)(ii)–2.i states that if a servicer services 3,000 mortgage loans, but is affiliated (as defined at § 1026.32(b)(2)) [28] with another servicer that services 4,000 other mortgage loans, both servicers are considered to service 7,000 mortgage loans and neither servicer is considered a small servicer. The second example illustrates the ownership requirement of the small servicer test. Proposed comment 41(e)(4)(ii)–2.ii states that if a servicer services 3,100 mortgage loans, including 100 mortgage loans it neither owns nor originated but for which it owns the mortgage servicing rights, the servicer is not a small servicer. This is because the servicer services some mortgage loans for which the servicer (or an affiliate) is not the creditor or assignee, notwithstanding that the total number of mortgage loans serviced is fewer than 5,000.

Finally, the Bureau proposes to redesignate comment 41(e)(4)(ii)–2 as 41(e)(4)(ii)–3 and to revise the comment to provide further clarification regarding the application of the small servicer exemption in certain master servicer/subservicer relationships. Under the 2013 TILA Servicing Final Rule, comment 41(e)(4)(ii)–2 references Regulation X, 12 CFR 1024.31, for the definitions of ''master servicer'' and ''subservicer'' that apply to the rule. It also provides the example that, even though a master servicer meets the definition of a small servicer, a subservicer retained by that master servicer that does not meet the definition does not qualify for the small servicer exemption.

The proposed comment would clarify that a small servicer does not lose its small servicer status because it retains a subservicer, as that term is defined in 12 CFR 1024.31, to service any of its mortgage loans. The comment would also clarify that, for a subservicer, as that term is defined in 12 CFR 1024.31, to gain the benefit of the small servicer exemption, both the master servicer and the subservicer must be small servicers. The comment points out that, generally, a subservicer will not qualify as a small servicer because it does not own or did not originate the mortgage loans it subservices. However, a subservicer would qualify as a small servicer if it is an affiliate of a master servicer that qualifies as a small servicer.

Proposed comment 41(e)(4)(ii)–3 also removes the previous example described above in favor of three other examples that demonstrate the implication of a master servicer/subservicer relationship for purposes of qualifying for the small servicer exemption. In the first example, a credit union services 4,000 mortgage loans—all of which it originated or owns. The credit union retains a credit union service organization to subservice 1,000 of the mortgage loans and the credit union services the remaining 3,000 mortgage loans itself. The credit union has no affiliation relationship with the credit union service. The credit union is a small servicer and, thus, the small servicer exemption applies to the 3,000 mortgage loans the credit union services itself. The credit union service organization is not a small servicer because it services mortgage loans it does not own or did not originate. Accordingly, the credit union service organization does not gain the benefit of the small servicer exemption and, thus, must comply with any applicable mortgage servicing requirements for the 1,000 mortgage loans it subservices.

Proposed comment 41(e)(4)(ii)–3.ii posits the example of a bank holding company that, through a lender subsidiary, owns or originated 4,000 mortgage loans. All mortgage servicing rights for the 4,000 mortgage loans are owned by a wholly owned master servicer subsidiary. Servicing for the 4,000 mortgage loans is conducted by a wholly owned subservicer subsidiary. The bank holding company controls all of these subsidiaries and, thus, they are affiliates of the bank holding company pursuant § 1026.32(b)(2). Because the master servicer and subservicer service 5,000 or fewer mortgage loans and because the mortgage loans are owned or originated by an affiliate of each, the master servicer and the subservicer are each considered a small servicer and qualify for the small servicer exemption for all 4,000 mortgage loans.

Proposed comment 41(e)(4)(ii)–3.iii posits the example of a nonbank servicer that services 4,000 mortgage loans, all of which it originated or owns. The servicer retains a ''component servicer'' to assist it with servicing functions. The component servicer is

[28] The definition of ''affiliate'' for purposes of subpart E of Regulation Z, which includes § 1026.41, is set forth in § 1026.32(b)(2) and applies to all of subpart E, including the small servicer exemption. Affiliate, as defined in § 1026.32(b)(2), ''means any company that is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 USC 1841 *et seq.*).'' § 1026.32(b)(2).

not engaged in ''servicing'' as defined in 12 CFR 1024.2; that is, the component servicer does not receive any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and does not make the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. The component servicer is not a subservicer pursuant to 12 CFR 1024.31 because it is not engaged in servicing, as that term is defined in 12 CFR 1024.2. The nonbank servicer is a small servicer and the small servicer exemption applies to all 4,000 mortgage loans it services.

41(e)(4)(iii) Small Servicer Determination

Under the 2013 TILA Servicing Final Rule, § 1026.41(e)(4)(iii) sets forth certain criteria regarding how to determine if a servicer qualifies as a small servicer. Section 1026.41(e)(4)(iii) explains that the small servicer determination is based on the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. It also states that a servicer that ''crosses the threshold,'' and thus loses its small servicer status and its small servicer exemption, has six months after crossing the threshold or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt.

Proposed § 1026.41(e)(4)(iii) includes a number of revisions to § 1026.41(e)(4)(iii) as adopted by the 2013 TILA Servicing Final Rule. First, proposed § 1026.41(e)(4)(iii) would replace the reference to a servicer that ''crosses the threshold'' for determining if the servicer qualifies a small servicer with broader language indicating that a servicer that ''ceases to qualify'' as a small servicer will have six months or until the next January 1, whichever is later, to comply with any requirements for which a servicer is no longer exempt as a small servicer. The broader phrase ''ceases to qualify'' more accurately reflects the fact that there are two elements to determining if a servicer qualifies as a small servicer, as discussed above, either one of which could cause a servicer to lose exempt status.

Proposed § 1026.41(e)(4)(iii) thus would apply the transition period set out in the rule to situations in which a servicer no longer meets the loan count requirement as well as to situations in which the servicer no longer meets the requirement that the servicer is the creditor or assignee of all mortgage loans it services. Thus, if a servicer exceeds the 5,000 mortgage loan limit or begins to service mortgage loans it does not own or did not originate, it must comply with any requirements from which it is no longer exempt by either the following January 1 or six months after the change in operations that disqualifies it as a small servicer, whichever is later. For example, if on September 1 a servicer that previously qualified as a small servicer begins to service a mortgage loan that it does not own and did not originate, the servicer has until March 1 of the following year to comply with the requirements from which it was previously exempt as a small servicer.

The proposal also would add language to specify which mortgage loans should not be considered in determining small servicer status. Proposed § 1026.41(e)(4)(iii) would clarify that certain closed-end consumer credit transactions secured by a dwelling would not be considered for purposes of determining whether a servicer qualifies as a small servicer. Specifically, because such loans are exempt from § 1026.41, reverse mortgage transactions and mortgage loans secured by a consumer's interest in timeshare plans are not considered when determining if a servicer is a small servicer. (Because coupon book loans are exempt only from some requirements of § 1026.41, such loans are considered in determining whether a servicer is a small servicer.)

The Bureau also is proposing to exclude from consideration any mortgage loan voluntarily serviced by a small servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees (''charitably serviced'' mortgage loans). The Bureau has received feedback that certain servicers that would otherwise be considered small servicers, voluntarily service mortgage loans for unaffiliated non-profit entities for charitable purposes and do not receive compensation or fees from engaging in that servicing. If such charitably serviced mortgage loans are considered in connection with determining whether a servicer qualifies as a small servicer, a servicer engaging in this practice would not qualify for the small servicer exemption because the servicer would be servicing a mortgage loan it does not own or did not originate, notwithstanding that such servicer undertook to service those mortgage loans for charitable purposes.

The Bureau is concerned that including charitably serviced mortgage loans in determining status as a small servicer would cause servicers to refrain from charitable servicing rather than lose the benefits of a small servicer exemption. The Bureau believes such a result would not further the goal of consumer protection for the affected consumers and may instead negatively affect the availability and costs of credit for consumers whose mortgage loans would otherwise be serviced pursuant to such charitable arrangements. Further, the Bureau believes consumers more likely would receive superior service from an entity in the business of servicing that is willing to donate its services than from a non-profit entity that owns the mortgage servicing rights but is not experienced in the business of servicing. The Bureau believes that the benefits of excluding charitably serviced mortgage loans from small servicer determination outweigh the potential risks to consumers that exclusion may pose.

For the reasons set forth above, pursuant to the Bureau's exemption authority and authority to provide for adjustments and exceptions for any class of transactions as may be necessary or proper to effectuate the purposes of TILA, under TILA sections 105(a) and (f), the Bureau proposes that mortgage loans voluntarily serviced by a servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees are not considered in determining a servicer's qualification as a small servicer. As discussed, the Bureau believes that considering such loans in determining if a servicer is a small servicer would defeat the purposes of TILA by penalizing charitable servicers, thereby dissuading them from engaging in charitable servicing to the detriment of the consumers that otherwise would benefit from this activity. The Bureau requests comment regarding whether it is appropriate not to consider such mortgage loans when determining if a servicer qualifies for a small servicer exemption. The Bureau further requests comment on whether other mortgage loans serviced through similar limited arrangements should not be considered in determining whether a servicer is a small servicer. However, the Bureau emphasizes that, in this proposed rulemaking, it is neither reexamining nor seeking comment on the issue of exempting nonprofit entities engaged in mortgage servicing from the

requirements of the periodic statement or any other mortgage servicing rule.

Finally, the Bureau proposes to add comment 41(e)(4)(iii)–3. Proposed comment 41(e)(4)(iii)–3 would clarify that mortgage loans that are not considered for purposes of determining small servicer qualification pursuant to § 1026.41(e)(4)(iii), are not considered for determining either whether a servicer services, together with any affiliates, 5,000 or fewer mortgage loans or whether a servicer is servicing mortgage loans that it does not own or did not originate. Proposed comment 41(e)(4)(iii)–3 would further posit the example of a servicer that services 5,400 mortgage loans. Of these mortgage loans, the servicer owns or originated 4,800 mortgage loans, services 300 reverse mortgage transactions that it does not own or did not originate, and voluntarily services 300 mortgage loans that it does not own or did not originate for an unaffiliated non-profit organization for which the servicer does not receive any compensation or fees. Neither the reverse mortgage transactions nor the mortgage loans voluntarily serviced by the servicer are considered for purposes of determining if the servicer is a small servicer. Thus, because the only mortgage loans considered are the 4,800 other mortgage loans serviced by the servicer, and the servicer owns or originated each of those mortgage loans, the servicer is considered a small servicer and qualifies for the small servicer exemption with regard to all 5,400 mortgage loans it services. The comment also notes that reverse mortgages and transactions secured by a consumer's in timeshare plans, in addition to not being considered in determining small servicer qualification, also are *exempt* from the requirements of § 1026.41. In contrast, although charitably serviced mortgage loans, as defined by § 1026.41(e)(4)(iii), are likewise not considered in determining small servicer qualification, they are *not exempt* from the requirements of § 1026.41. Thus, a servicer that does *not* qualify as a small servicer would not be required to provide periodic statements for reverse mortgages and timeshare plans because they are exempt from the rule, but would be required to provide periodic statements for the mortgage loans it charitably services.

Legal authority. The Bureau is proposing to exclude charitably serviced mortgage loans and reverse mortgage transactions from consideration in determining a servicer's status as a small servicer for purposes of the small servicer exemption in § 1024.41(e)(4) pursuant to its authority to provide for adjustments and exceptions under TILA section 105(a) and (f).[29] With respect to charitably serviced mortgage loans, the Bureau believes, for the reasons described above, that declining to consider such mortgage loans for purposes of determining eligibility as a small servicer effectuates the purposes of, and facilitates compliance with TILA and Regulation Z. Further, consistent with TILA section 105(f) and in light of the factors in that provision, the Bureau believes that requiring servicers to consider mortgage loans they charitably service for purposes of determining eligibility as a small servicer would cause mortgage servicers to withdraw from such charitable relationships and will not provide a meaningful benefit to consumers in the form of useful information or protection. In addition, the Bureau is concerned regarding the extent to which any requirement to consider such loans will complicate, hinder, or make more expensive the credit process for such mortgage loan transactions, especially considering the status of the borrowers that typically secure mortgage loans that are charitably serviced. Ultimately, the Bureau believes the goal of consumer protection would be undermined if it considers for purposes of small servicer qualification, mortgage loans voluntarily serviced by a servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees.

The Bureau similarly believes that not considering reverse mortgage in determining whether a servicer is a small servicer effectuates the purposes of, and facilitates compliance with, TILA and Regulation Z. The Bureau believes this for the same reasons set forth in the 2013 TILA Servicing Final Rule[30] exempting reverse mortgages from the requirements of § 1024.41. As discussed in that Final Rule, the periodic statement requirements were designed for a traditional mortgage product such that information relevant and useful for consumers with reverse mortgages differs substantially from the information required on the periodic statement and, thus, would not provide a meaningful benefit to consumers of reverse mortgages. The Bureau believes that not considering reverse mortgages in determining whether a servicer is a small servicer is proper irrespective of the amount of the loan, the status of the consumer (including related financial arrangements, financial sophistication, and the importance to the consumer of the loan), or whether the loan is secured by the principal residence of the consumer.

Section 1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(e) Qualified Mortgages

43(e)(4) Qualified Mortgage Defined—Special Rules

The 2013 ATR Final Rule generally requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan) and establishes certain protections from liability under this requirement for ''qualified mortgages.'' These provisions, in § 1026.43(c), (e)(2) and (4), and (f), implement the baseline requirement of TILA section 129C(a)(1) and the qualified mortgage provisions of TILA section 129C(b).

To determine the qualified mortgage status of a loan, creditors must analyze whether the loan meets one of the definitions of ''qualified mortgage'' in § 1026.43(e)(2), (e)(4), or (f). Section 1026.43(e)(4) provides a definition of qualified mortgage for loans that (1) meet the prohibitions on certain risky loan features (*e.g.,* negative amortization and interest only features); (2) do not exceed certain limitations on points and fees under § 1026.43(e)(2); and (3) either are eligible for purchase or guarantee by the GSEs, while under the conservatorship of the Federal Housing Finance Agency, or are eligible to be insured or guaranteed by HUD under the National Housing Act (12 U.S.C. 1707 *et seq.*), the VA, the USDA, or RHS.[31] HUD, VA, USDA, and RHS have authority under the Dodd-Frank Act to define qualified mortgage standards for their own loans. *See* TILA section 129C(b)(3)(B)(ii). Coverage under § 1026.43(e)(4) for such loans will

[29] TILA section 128(f) requires periodic statements for ''residential mortgage loans,'' which, pursuant to TILA section 103(cc)(5), excludes transactions secured by consumers' interests in timeshare plans. For this reason, exception authority is not required to exclude such loans from consideration in determining if a servicer is a small servicer.

[30] *See* 78 FR 10973.

[31] Eligibility standards for the GSEs and Federal agencies are available at: Fannie Mae, *Single Family Selling Guide, https://www.fanniemae.com/content/guide/sel111312.pdf;* Freddie Mac, *Single-Family Seller/Servicer Guide, http://www.freddiemac.com/sell/guide/;* HUD Handbook 4155.1, *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/41551HSGH.pdf;* Lenders Handbook—VA Pamphlet 26–7, *Web Automated Reference Material System (WARMS), http://www.benefits.va.gov/warms/pam26_7.asp; Underwriting Guidelines: USDA Rural Development Guaranteed Rural Housing Loan Program, http://www.rurdev.usda.gov/SupportDocuments/CA-SFH-GRHUnderwritingGuide.pdf.*

sunset once each agency promulgates its own qualified mortgage standards and such rules take effect. Coverage of GSE-eligible loans will sunset when conservatorship ends.

Even if the Federal agencies do not issue additional rules or conservatorship does not end, the temporary qualified mortgage definition in § 1026.43(e)(4) will expire seven years after the effective date of the rule.[32] Covered transactions that satisfy the requirements of § 1026.43(e)(4) that are consummated before the sunset of § 1026.43(e)(4) will retain their qualified mortgage status after the temporary definition expires. However, a loan consummated after the sunset of § 1026.43(e)(4) may be a qualified mortgage only if it satisfies the requirements of § 1026.43(e)(2) or (f), under the final rule.[33]

Eligibility Under GSE/Agency Guides and Automated Underwriting Systems

As adopted by the 2013 ATR Final Rule, comment 43(e)(4)–4 clarifies that, to satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by a GSE or insured or guaranteed by HUD, VA, USDA, or RHS. Rather, § 1026.43(e)(4)(ii) requires only that the loan be eligible for such purchase, guarantee, or insurance. For example, the comment provides that, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to the GSEs for that loan to be a qualified mortgage. Rather, the loan must be eligible for purchase or guarantee by the GSEs. To determine eligibility, a creditor may rely on an underwriting recommendation provided by one of the GSEs' or agencies' automated underwriting systems (AUSs) or their written guides. Accordingly, with regard to the GSEs, the comment states that a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac (and therefore a qualified mortgage under § 1026.43(e)(4)) if: (i) the loan conforms to the standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide; or (ii) the loan receives an ''Approve/Eligible'' recommendation from Desktop Underwriter (DU); or an ''Accept and Eligible to Purchase'' recommendation from Loan Prospector (LP).

The Bureau is proposing to revise comment 43(e)(4)–4 in a number of ways as discussed here and below. First, the proposal would clarify that a creditor is not required to comply with all GSE or agency requirements to show qualified mortgage status. Specifically, the proposed revision specifies that the creditor need not comply with certain requirements that are wholly unrelated to a consumer's ability to repay, including activities related to selling, securitizing, or delivering consummated loans and any requirement the creditor is required to perform after the consummated loan is sold, guaranteed, or endorsed for insurance (in the case of agency loans) such as document custody, quality control, and servicing. These requirements are spelled out in the most depth in the GSE and agency written guides, but may also be referenced in automated underwriting system conditions and written agreements with individual creditors, as discussed further below.

The Bureau believes that the proposed comment will clarify the intended scope of the temporary category of qualified mortgage created in § 1026.43(e)(4) and facilitate compliance with the provisions of Regulation Z adopted in the 2013 ATR Final Rule. As the Bureau explained in the preamble to the final rule, the Bureau established § 1026.43(e)(4) as a temporary transition measure designed to ensure access to responsible, affordable credit for consumers with debt-to-income ratios that exceed the 43% threshold that the Bureau adopted as a bright-line standard in the permanent general definition of qualified mortgage under § 1026.43(e)(2) while creditors adapted to the new ATR rules and other changes in economic and regulatory conditions. The Bureau believed that using widely recognized, federally related underwriting standards to define qualified mortgages during this interim period would both facilitate compliance and ensure responsible lending practices. The temporary provision therefore bases qualified mortgage status on *eligibility* for purchase, insurance, or guarantee, but does not require actual sale, guarantee, or insurance endorsement. Furthermore, the temporary provision requires that a qualified mortgage must be eligible at consummation.

However, the Bureau recognizes that the GSEs and agencies impose a wide variety of requirements relating not only to underwriting of potentially eligible loans, but also to the mechanics of sale, guarantee, or insurance and post-consummation activities. Because underwriting is a complex process that involves assessment of the consumer's ability to repay the loan as well as other credit risk factors, the Bureau continues to believe that it is appropriate to base qualified mortgage status under § 1026.43(e)(4) on the GSEs' and agencies' general standards concerning borrower, product, and mortgage eligibility and underwriting. While some of these underwriting requirements may be more closely related to assessing a consumer's ability to repay than others, the Bureau believes that attempting to disaggregate them would be an extraordinarily complex task that would defeat the purposes of the temporary definition in adopting widely recognized standards to facilitate compliance and access to responsible credit. Where groups of requirements are wholly unrelated to underwriting (*i.e.,* wholly unrelated to assessing ability to repay and other risk-related factors), however, the Bureau believes that it is appropriate to specify that such requirements do not affect qualified mortgage status.

The Bureau believes that the items specified in the comment meet this test and provide greater clarity to the temporary definition of qualified mortgage. Because TILA requires assessment of a consumer's ability to repay a loan as of the time of consummation, the Bureau believes that GSE and agency requirements relating to post-consummation activity should not be relevant to qualified mortgage status. And because the temporary definition does not require actual purchase, guarantee, or insurance, the Bureau believes that it would not be appropriate to base qualified mortgage status on elements of the guides relating to the mechanics of actual delivery, purchase, guarantee, and endorsement. The Bureau recognizes that most requirements wholly unrelated to underwriting involve post-consummation activity, however, pre-consummation GSE and agency requirements could also be wholly unrelated to underwriting. For example, the status of a creditor's approval or eligibility to do business with a GSE is not relevant for ascertaining qualified mortgage status. The Bureau invites comment on this proposed clarification generally and on whether other GSE or

[32] The rule's effective date is January 10, 2014, thus the § 1026.43(e)(4) qualified mortgage definition expires at the latest on January 10, 2021.

[33] The Bureau issued a concurrent proposed rule after January 10, 2013 when the 2013 ATR Final Rule was issued. The proposed Amendments to the Ability to Repay Standards under the Truth in Lending Act amend the 2013 ATR Final Rule by providing exemptions for certain nonprofit creditors and certain homeownership stabilization programs and an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors. The Bureau also seeks feedback in the proposal on whether additional clarification is needed regarding the inclusion of loan originator compensation in the points and fees calculation. The concurrent proposal is available at: *http://files.consumerfinance.gov/f/201301_cfpb_concurrent-proposal_ability-to-repay.pdf.*

agency requirements should be excluded.

The Bureau is also proposing to revise comment 43(e)(4)–4 to clarify eligibility as determined by an automated underwriting system of a GSE, or one of the agencies. Thus, the AUSs and the written guides of the GSEs as well as the agencies can be used for eligibility purposes. The proposed language would explain that to rely upon an AUS recommendation to demonstrate qualified mortgage status a creditor must have (1) accurately input the loan information into the automated system, and (2) satisfied any accompanying requirements or conditions to the AUS approval that would otherwise invalidate the recommendation, unless the conditions concern activities related to selling, securitizing, or delivering consummated loans or post-consummation requirements as discussed above. The comment as adopted in the 2013 ATR Final Rule assumed that any recommendation used for compliance would be valid, and these clarifications merely list two criteria that should be monitored to ensure that validity. In particular, because the AUSs generate a list of conditions that must be met in support of the approval designation, the Bureau believes that those conditions must be satisfied to show eligibility for purchase, guarantee, or insurance. The Bureau seeks comment on these revisions as well and is also proposing technical edits to comment 43(e)(4)–4 for clarity and accuracy.

Effect of Written Contract Variances

The Bureau also is proposing to revise comment 43(e)(4)–4 in a third way to clarify further that a loan meeting eligibility requirements provided in a written agreement between the creditor and a GSE or agency that permits variation from the standards of the written guides and/or AUSs in effect at the time of consummation is also eligible for purchase or guarantee by the GSEs or insurance or guarantee by the agencies for the purposes of § 1026.43(e)(4). Thus, such loans would be qualified mortgages. The Bureau recognizes that these agreements between creditors and the GSEs or agencies effectively constitute modification of, or substitutes for, the general manuals or AUSs with regard to these creditors. In many cases, the agreements allow the creditors to use other automated underwriting systems rather than the GSE or agency systems, subject to certain conditions or limitations on which loans the GSE or agency will accept as eligible for purchase, guarantee, or insurance. The Bureau believes that it is therefore appropriate for the purposes of § 1026.43(e)(4) to consider the agreements to be equivalent to the standard written guides for purposes of the specific creditor to which the agreement applies. Many of these agreements are necessary to accommodate local and regional market variations and other considerations that do not substantially relate to ATR-related underwriting criteria and therefore are generally consistent with the consumer protection and other purposes of the rule. However, the Bureau does not believe that it would be appropriate to allow one creditor to rely on the terms specified in another creditor's written agreement with a GSE or agency to establish qualified mortgage status, as the written agreements are individually negotiated and monitored. The Bureau seeks comment on this proposed clarification generally and on whether other variations on standard guides and eligibility criteria should be considered.

Repurchase and Indemnification Demands

The Bureau is also proposing new comment 43(e)(4)–5 to provide additional clarification on how repurchase and indemnification demands by the GSEs and agencies may affect the qualified mortgage status of a loan. The proposed comment does not amend the meaning of the current rule but clarifies how a determination of the qualified mortgage status of a loan should be understood in relation to claims that the loan was not eligible for purchase or insurance and therefore not a qualified mortgage. The Bureau understands that facts upon which eligibility status was determined at or before consummation could later be found to be incorrect. Often, a repurchase or indemnification demand by a GSE or an agency involves such issues. However, the mere occurrence of a GSE or agency demand that a creditor repurchase a loan or indemnify the agency for an insurance claim does not necessarily mean that the loan is not a qualified mortgage.

Proposed comment 43(e)(4)–5 specifically provides that a repurchase or indemnification demand by the GSEs, HUD, VA, USDA, or RHS is not dispositive in ascertaining qualified mortgage status. Much as qualified mortgage status under the general definition in § 1026.43(e)(2) may typically turn on whether the consumer's debt-to-income ratio at the time of consummation was equal to or less than 43%, qualified mortgage status under § 1026.43(e)(4) may typically turn on whether the loan was eligible for purchase, guarantee, or insurance at the time of consummation. Thus, for example, a demand for repurchase or indemnification based on post-consummation GSE or agency requirements would therefore not be relevant to qualified mortgage status. Rather, only reasons for a repurchase or indemnification demand that specifically apply to the qualified mortgage status of the loan under § 1026.43(e)(4) would be relevant, as discussed above in connection with proposed comment 43(e)(4)–4. Moreover, the mere fact that a demand has been made, or even resolved, as between a creditor and GSE or agency is not dispositive with regard to eligibility for purposes of § 1026.43(e)(4), as those parties are involved in an ongoing business relationship rather than an adjudicatory process. However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealings over a particular demand, depending on the facts and circumstances. Such evidence—like any evidence discovered after consummation that relates to the facts as of the time of consummation—may be relevant in assessing whether a particular loan is a qualified mortgage.

To clarify this point further, proposed comment 43(e)(4)–5 also includes two examples of relevant evidence discovered after consummation. In the first example, assume eligibility to purchase a loan was based in part on the consumer's employment income of $50,000 per year. The creditor uses the income figure in obtaining an approve/eligible recommendation from DU. A quality control review, however, later determines that the documentation provided and verified by the creditor to comply with Fannie Mae requirements did not support the reported income of $50,000 per year. As a result, Fannie Mae demands that the creditor repurchase the loan. Assume that the quality control review is accurate, and that DU would not have issued an approve/eligible recommendation if it had been provided the accurate income figure. The Bureau believes that, given the facts and circumstances of this example, the DU determination at the time of consummation was invalid because it was based on inaccurate information provided by the creditor; therefore, the loan was never a qualified mortgage.

For the second example, assume a creditor delivered a loan, that the creditor determined was a qualified mortgage at the time of consummation,

to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted-average coupon (WAC), weighted-average maturity (WAM), and other MBS pooling criteria, and MBS issuance disclosures to investors reflect this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for other Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. The reason the creditor repurchases this loan is not relevant to the loan's qualified mortgage status. The loan still meets other Fannie Mae eligibility requirements and therefore remains a qualified mortgage based on these facts and circumstances.

The Bureau invites comment on proposed comment 43(e)(4)–5 in general. The Bureau also solicits comment on whether additional examples or other particular situations should be provided or whether alternatives for eligibility other than relationship to ability-to-repay standards should be adopted that would determine the qualified mortgage status of a loan.

Section 1026.43(e)(4) was adopted pursuant to the Bureau's exception and adjustment authority under TILA section 105(a) and its authority to revise, add to, or subtract from criteria that define a qualified mortgage under TILA section 129C(b)(3)(B)(i). The Bureau proposes these revisions to comment 43(e)(4)–4 and proposes new comment 43(e)(4)–5 to provide additional clarity to § 1026.43(e)(4) pursuant to that authority.

Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income

Section 1026.43(e)(2) defines ''qualified mortgages'' as loans that satisfy all of the qualified mortgage criteria required by the statute (including underwriting to the maximum interest rate during the first five years of the loan and consideration and verification of the consumer's income or assets), for which the creditor considers and verifies the consumer's current debt obligations, alimony, and child support, and that have a total (*i.e.,* back-end) monthly DTI of no greater than 43 percent, following the standards for ''debt'' and ''income'' set forth in appendix Q to the rule. The Bureau adopted the 43 percent DTI requirement and other modifications to the statutory criteria pursuant to its authorities under TILA section 129C and 105(a).[34]

The Bureau also adopted and incorporated into the rule appendix Q, which contains detailed requirements for determining ''debt'' and ''income'' for the purposes of the DTI calculation based on the definitions of those terms set forth in HUD Handbook 4155.1, *Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans.* The standards in the Handbook are used by creditors originating FHA-insured residential mortgages to determine and verify a consumer's total monthly debt and monthly income. For the purposes of appendix Q, the Bureau largely codified the Handbook, but modified various portions of it to remove standards and references unique to the FHA underwriting process, such as references to the TOTAL Scorecard Instructions and certain borrower qualification procedures.

As discussed in the preamble to the 2013 ATR Final Rule, the Bureau believes that, to the extent possible, using existing FHA underwriting guidelines as the foundation for determining ''debt'' and ''income'' for DTI purposes provides creditors with well-established standards for determining whether a loan is a qualified mortgage under § 1026.43(e)(2). The Bureau also believes that this approach is consistent with the proposed approach to defining debt and income in the 2011 Proposed Qualified Residential Mortgage Rule (QRM), thus facilitating compliance. However, the Bureau stated it would continue to consult with the Federal agencies responsible for the QRM rulemaking on possible changes to FHA guidelines that may occur over time, which could affect the definition of debt and income in both rules.

Since publication of the 2013 ATR Final Rule, the Bureau has received numerous inquiries from industry regarding provisions of the appendix that they believe were intended to function as flexible underwriting standards used by the FHA for insurance underwriting purposes, but now have been codified as bright-line requirements for determining debt and income. For example, some provisions of the appendix as adopted would require creditors to assess a consumer's qualifications for employment, predict whether a consumer's income will continue for up to three years, or assess economic conditions that may affect future income for self-employed consumers. Stakeholders have raised concerns that these provisions may be properly suited for the purposes of a holistic and qualitative underwriting analysis—such as a determination of insurance eligibility where the FHA has discretion to grant waivers or variances based on a given set of facts or offer informal guidance—but are not well-suited to function as regulatory requirements that are not subject to discretionary variance or waiver on an individual basis. Stakeholders also pointed out that many of these provisions (such as requirements to evaluate a consumer's qualification for his or her job) provide little clarity or guidance for creditors to follow to comply with them—again a consequence of their original purpose to function as discretionary ''guidelines'' and not bright-line requirements. Similarly, stakeholders have expressed concerns that the broad nature of these provisions could undermine the presumption of compliance available to creditors who make qualified mortgages and expose them to significant litigation risk.

As discussed below, the Bureau adopted these provisions of appendix Q largely for consistency with existing underwriting standards used by FHA, but in light of the concerns raised by stakeholders agrees that certain provisions as adopted are not properly suited to function as regulations. The Bureau intended appendix Q to serve as a reliable mechanism for creditors to evaluate income and debts for the purpose of determining DTI and in turn the qualified mortgage status of a loan. It did not intend for appendix Q to function as a general and flexible underwriting policy for assessing risk (as it is used by FHA in the context of insurance), and recognizes that the Bureau will not have the same level of discretion regarding the application of appendix Q. Thus, in light of these inquiries, the Bureau proposes the following revisions to appendix Q to facilitate compliance when determining DTI and to further the purposes of the ATR Rule.

In addition, the Bureau proposes other revisions to clarify the application of appendix Q, as well as general technical and wording changes throughout appendix Q for consistency and clarification, including technical changes to conform to the specific

[34] The Bureau notes that the specific 43 percent debt-to-income requirement applies only to qualified mortgages under § 1026.43(e)(2). The specific debt-to-income ratio requirement does not apply to loans that meet the qualified mortgage definitions in § 1026.43(e)(4) or (f), or that are not qualified mortgages and instead comply with the general ability-to-repay standard.

purpose that appendix Q serves in the 2013 ATR Final Rule, as opposed to the function that the HUD Handbook serves for FHA underwriting.

I. CONSUMER ELIGIBILITY

A. Section I.A. Stability of Income

The Bureau proposes revising the criteria in appendix Q for determining whether a consumer's income is ''stable'' for the purposes of DTI. Appendix Q as adopted requires in section I.A.3 that creditors evaluate the ''probability of continued employment'' by analyzing, among other things, (i) The consumer's past employment record; (ii) the consumer's qualification for the position; (iii) the consumer's previous training and education; and (iv) the employer's confirmation of continued employment. Stakeholders have raised concerns that, beyond analysis of a consumer's past employment record and current employment status, each of these requirements is incompatible with appendix Q's purpose of providing clear rules for determining debt and income, and is likely to result in compliance difficulty and significant exposure to litigation risk for creditors attempting to avoid such risk by originating qualified mortgages and thereby taking advantage of the presumption of compliance. For instance, stakeholders have informed the Bureau that many employers are likely to be unwilling for various reasons (including but not limited to economic uncertainty) to confirm that a consumer's employment will continue into the future, and similarly creditors may be unqualified to evaluate a consumer's education, training, and job qualifications. The Bureau believes that requirements for a creditor to evaluate a consumer's training, education, and qualifications for his or her position are not well-suited to function as regulations designed to enable creditors to determine debts and income and in turn calculate a DTI ratio, and may increase exposure to litigation risk. In the context of codified regulations as opposed to guidelines subject to waiver, variance, or other guidance, it is not entirely clear what creditors would need to do in order to comply with them, or how those determinations would affect a consumer's income for the purpose of calculating DTI. In turn this could increase the risk of litigation to creditors attempting to operate in qualified mortgage space.

The Bureau believes that requiring creditors to obtain an employer's confirmation of the consumer's continued employment will not function properly as a regulatory requirement because employers likely will be unwilling to provide any confirmation of employment continuing beyond current, ongoing employment. Without the benefit of waiver or variance, such a requirement could serve to disqualify any such consumer's employment income from being included in the DTI calculation—which would frustrate access to credit.

For these reasons, the Bureau proposes to amend appendix Q in section I.A.3 to remove the requirements that creditors determine the ''probability of continued employment'' by considering a consumer's ''qualifications for the position'' and ''previous training and education.'' Instead, the Bureau is proposing to amend the provision to require creditors to examine past and current employment. The Bureau is also proposing to remove the requirement that creditors obtain ''the employer's confirmation of continued employment'' and instead require only that the creditor examine a confirmation of current, ongoing employment.

The Bureau believes that a confirmation of current, ongoing employment status is adequate to verify employment for purposes of determining income and is proposing to amend appendix Q accordingly. In addition, the Bureau is adding for clarification purposes a proposed note that states creditors may assume that employment is ongoing if a consumer's employer verifies current employment and does not indicate that employment has been, or is set to be terminated. The proposed note would make clear that creditors should not rely upon a verification of current employment that includes an affirmative statement that the employment is likely to cease, such as a statement that indicates the employee has given (or been given) notice of employment suspension or termination. The Bureau also is proposing other technical changes to section I.A for clarification purposes; no substantive change is intended by these amendments.

B. Section I.B. Salary, Wage and Other Forms of Income

The ''General Policy on Consumer Income Analysis'' in section I.B.1.a of appendix Q as adopted states that creditors must analyze the income for each consumer who will be obligated for the mortgage debt to determine whether his/her income level can be reasonably expected to continue ''through at least the first three years of the mortgage loan.'' Similarly, sections I.B.2 and I.B.3 of appendix Q as adopted require that creditors determine whether overtime and bonus income ''will likely continue'' and that they ''establish and document an earnings trend for overtime and bonus income.'' With respect to these provisions, the Bureau received inquiries from industry stakeholders similar to those discussed above, noting that these provisions codify general, forward-looking standards that are better suited for the purposes of a holistic and qualitative underwriting analysis (such as the FHA guidelines for determining insurance eligibility) and may not function properly as regulations. And, because the Bureau may not have the same flexibility to waive or grant variances on an individual basis regarding the application of appendix Q that the FHA has with respect to its underwriting requirements, these provisions will undermine the purpose of appendix Q to serve as a reliable mechanism for evaluating income and debts for the purpose of determining the qualified mortgage status of a loan, and also increase the risk of litigation.

The Bureau believes that the intended purpose of appendix Q will not be served by requiring creditors to predict a consumer's employment status up to three years after application. As noted above, the Bureau largely adopted these provisions from the existing FHA underwriting guidelines for the purposes of consistency with existing standards used by industry to evaluate debts and income. However, the Bureau believes that these requirements are unlikely to function properly as regulatory requirements and may frustrate appendix Q's purpose of providing clear and reliable standards for determining debts and income for purposes of the 2013 ATR Final Rule. The Bureau also believes that the broad nature of these provisions could increase the risk of litigation to creditors attempting to take advantage of the qualified mortgage presumption of compliance. For these reasons, the Bureau is proposing amendments to section I.B.1 of appendix Q to explain and clarify the criteria for calculating a consumer's employment income and to determine whether a consumer's income is continuing for the purposes of the DTI calculation. The Bureau also is proposing to amend section I.B.1.a to require creditors to evaluate only whether a consumer's income level would not be reasonably expected to continue based on the documentation provided, with no three-year requirement. The Bureau believes that creditors should be required to analyze recent and current employment, along with any evidence in the applicant's

documentation indicating whether employment is likely to continue. The Bureau is proposing to add a note would make clear that creditors should not assume that a consumer's wage or salary income can be reasonably expected to continue if the verification of current employment includes an affirmative statement that the employment is likely to cease, such as a statement that indicates the employee has given (or been given) notice of employment suspension or termination. However, if the consumer's application and the employment confirmation indicate that the consumer is currently employed and provide no such indication that employment will cease, the Bureau believes the creditor should be able to use that consumer's income without an obligation to predict whether or not that consumer will be employed on some future date.

For similar reasons, the Bureau also is proposing changes to sections 1.B.2 and 1.B.3, regarding bonus and overtime income. The Bureau is proposing to eliminate the requirement in section I.B.2.a that creditors determine whether such income ''will continue.'' Instead, creditors must focus on evaluating the consumer's documented bonus and overtime income history for the past two years and any submitted documentation indicating whether the income likely will cease. The Bureau recognizes that bonus and overtime income may vary from year to year and generally may be less reliable than salary. However, in certain occupations, overtime and bonus income may be an integral and reliable component of the consumer's income. The Bureau believes that creditors must confirm that bonus and overtime income is not anomalous. Even so, the Bureau believes the requirement to analyze the consumer's two-year overtime bonus and overtime history and to verify that the submitted documentation does not indicate bonus or overtime income will cease adequately addresses this concern while satisfying the purposes of the qualified mortgage provision.

The Bureau further is proposing clarifications to the provisions in section I.B.11 of appendix Q as adopted explaining how to account for Social Security income. Section I.B.11 as adopted requires that Social Security income either be verified by the Social Security Administration or through Federal tax returns. While the provision as adopted references Federal tax returns, the Bureau believes that a Social Security benefit verification letter may more easily provide proof of the receipt of Social Security benefits and their continuance. Thus, the Bureau is proposing to amend section I.B.11 to remove the option of using Federal tax returns and instead require creditors to obtain a benefit verification letter issued by the Social Security Administration. The Bureau also proposes to clarify in section I.B.11 that a creditor shall assume a benefit is ongoing and will not expire within three years absent evidence of expiration. The Bureau believes this would provide a more workable and accurate standard for verification of Social Security income.

C. Section I.D. General Information on Self-Employed Consumers and Income Analysis

As adopted, section I.D of appendix Q permits income from self-employed consumers to be considered income for the purposes of the DTI calculation if certain criteria are met, including various documentation requirements and analysis of the financial strength of the consumer's business. Among the documentation requirements in section I.D.4 is the requirement to provide a ''business credit report for corporations and 'S' corporations.'' The analysis of the financial strength of the business in section I.D.6 requires that the creditor carefully analyze the ''source of the business's income'' and the ''general economic outlook of similar businesses in the area.'' Like other provisions of appendix Q discussed above, the Bureau has received inquiries from stakeholders concerning these requirements and also noted compliance difficulties and increased risk of litigation that may arise from them. Specifically, industry has raised concerns that business credit reports can be expensive and difficult to obtain, and a requirement to assess economic conditions for geographic areas both costly and difficult, as well as imprecise—which is contrary to the purpose of appendix Q to provide reliable and uniform standards for assessing income. Furthermore, the broad and fact-specific nature of this requirement could also increase litigation risk by undermining the qualified mortgage presumption of compliance.

The Bureau proposes to make several amendments to these income stability requirements for self-employed consumers. The first amendment eliminates the requirement in current section I.D.4 that self-employed consumers provide a business credit report for corporations and ''S'' corporations. The Bureau recognizes that business credit reports for many smaller businesses can be difficult or very expensive to obtain. The Bureau believes that these reports may provide some valuable information for the purposes of an underwriting analysis, but are less suited to function as a requirement to determining income for self-employed consumers.

The second proposed amendment eliminates two requirements under the requirement to analyze a business's financial strength in section I.D.6. Current section I.D.6 requires creditors (i) to evaluate the sources of the business's income and (ii) to evaluate the general economic outlook for similar businesses in the area. The Bureau believes that both of these requirements demand that the creditor engage in complex analysis without providing clarity concerning what types of evaluations are satisfactory for the purpose of complying with the rule. As discussed above, such a provision is better-suited to function as part of an underwriting analysis subject to waiver, variance, and guidance rather than a regulatory rule—and as adopted could increase the risk of litigation risk to creditors. Accordingly, the proposal would eliminate these requirements.

The Bureau's proposal also makes technical revisions to section I.D. to accommodate removal of these requirements.

II. NON-EMPLOYMENT RELATED CONSUMER INCOME

A. Section II.B. Investment and Trust Income

Section II.B.2 of appendix Q as adopted permits trust income to be considered income for the purposes of the DTI calculation ''if guaranteed, constant payments will continue for at least the first three years of the mortgage term.'' Current appendix Q then provides a list of required documentation consumers must provide but does not otherwise specify the universe creditors must review to make and support the three-year determination.

For clarification purposes, the Bureau proposes to delineate more clearly the breadth of the analysis for trust income by specifying that the analysis is limited to the documents appendix Q requires. Specifically, the proposal revises ''if guaranteed, constant payments will continue for at least the first three years of the mortgage term'' by adding ''as evidenced by trust income documentation.'' Under the current requirements in section II.B.2, there is no specific cut-off for the amount of diligence required or information that must be collected to satisfy the requirement. The Bureau believes that the amendment will facilitate compliance and help ensure access to

credit by making the standard clear and easy to apply.

For notes receivable income to be considered income, section II.B.3.a of appendix Q as adopted requires that the consumer provide a copy of the note and documentary evidence that payments have been consistently made over the prior 12 months. If the consumer is not the original payee on the note, however, section II.B.3.b requires the creditor to establish that the consumer is ''now a holder in due course, and able to enforce the note.'' The Bureau proposes to eliminate the requirement that the consumer be a holder in due course, which may require further investigation than is necessary to establish that the income is effective for the purposes of the rule. The proposal would amend appendix Q to require only that the consumer is able to enforce the note.

B. Section II.D. Rental Income

As adopted, appendix Q allows creditors to consider certain rental income payable to the consumer taking out the loan for the purposes of the DTI calculation in section II.D. Section II.D.3.a states that it is not acceptable to consider income from roommates in a single-family property occupied as the consumer's primary residence as ''income'' for the purposes of determining the consumer's DTI, but that it is acceptable to consider rental income payable to the consumer from boarders related by blood, marriage, or law. The Bureau adopted this provision of appendix Q for consistency with existing FHA standards used by industry.

Since publication of the Final Rule, the Bureau has become aware of concerns that may arise from requirements that boarders be related to the homeowner in order for rental income payable to the consumer to be considered ''income'' for DTI purposes. The Bureau does not believe that the relation requirement is useful in determining whether or not the rental income should be used in determining DTI. The Bureau accordingly proposes to eliminate the requirement that boarders be related by blood, marriage, or law from section II.D.3.a.

The Bureau adopted Appendix Q under its TILA section 105(a) and its authority under TILA section 129C(b)(2)(vi) to establish guidelines or regulations relating to ratios of total monthly debt to monthly income for the purposes of defining qualified mortgages and, more broadly, its authority under 129C(b)(3) to prescribe rules to implement the qualified mortgage and revise, add to or subtract form the qualified mortgage criteria. The Bureau invites comment on these proposed changes to appendix Q. The Bureau also seeks comment on other potential amendments that may better facilitate compliance while furthering the purposes of the qualified mortgage provision and the 2013 ATR Final Rule.

V. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

The Bureau is considering the potential benefits, costs, and impacts of the proposed rule.[35] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult with, the prudential regulators, SEC, HUD, VA, USDA, FHFA, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As noted above, this rule proposes amendments to some of the final mortgage rules issued by the Bureau in January of 2013. These amendments clarify or correct provisions on (1) The small servicer exemption from the new servicing rules; (2) the use of GSE and federal agency purchase, guarantee, or insurance eligibility for determining qualified mortgage status; (3) the determination of debt and income for purposes of originating qualified mortgages; and (4) the relation to State law of Regulation X's servicing provisions.

B. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes that, compared to the baseline established by the final rules issued in January 2013,[36] the primary benefit of most of the provisions of the proposed rule to both consumers and covered persons is an increase in clarity and precision of the regulations and an accompanying reduction in compliance costs. More specifically, the provisions that would clarify: (1) The definition of qualified mortgage under the test that they be eligible for purchase or guarantee by the GSEs or insured or guaranteed by the agencies for the purposes of the provisions adopted by the 2013 ATR Final Rule; (2) the proposed new comment which provides that a repurchase or indemnification demand by the GSEs, FHA, VA, USDA, or RHS is not determinative of qualified mortgage status; (3) the proposed changes to appendix Q of Regulation Z assisting creditors in determining a consumer's debt-to-income ratio (DTI); and, (4) the proposed amendment to Regulation X to clarify that the preemption provisions in Regulation X do not preempt the field of regulation of the practices covered by RESPA and Regulation X all should add clarity to the rule and thus lower costs of compliance. The Bureau believes that each of these changes simply conform the rules to the policies intended by the final rules issued in January. Accordingly, the discussion of benefits, costs, or impacts discussed in part VII of each of the January rules considered each of the proposed provisions.

One of the proposed changes may slightly alter whether particular persons are covered by a relevant exemption. Specifically, the proposal would modify the text of the Regulation Z servicing rule to clarify scope and application of the small servicer exemption, to clarify the application of the small servicer exemption with regard to servicer/affiliate and master servicer/subservicer relationships, and to exclude mortgage loans voluntarily serviced for an unaffiliated entity without remuneration, reverse mortgage transactions, and mortgage loans secured by consumers' interest in timeshare plans from being considered when determining whether a servicer qualifies as a small servicer. In total, these changes are expected to grant the small servicer exemption to a larger number of firms: These entities should benefit from lower costs while their customers may lose some of the protections embedded in the relevant rules. The nature and magnitude of these protections and their potential costs are described in part VII of both of the 2013 Mortgage Servicing Final Rules.

The proposed rule is not expected to have a differential impact on depository

[35] Section 1022(b)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 5521(b)(2), directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on insured depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives that those agencies administer.

[36] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

institutions and credit unions with $10 billion or less in total assets as described in section 1026 or on consumers in rural areas. Given the small changes for the proposed rule, the Bureau does not believe that the proposed rule would meaningfully reduce consumers' access to consumer products and services.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[37] These analyses must ''describe the impact of the proposed rule on small entities.'' [38] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[39] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[40] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[41]

This rulemaking is part of a series of rules that have revised and expanded the regulatory requirements for entities that originate or service mortgage loans. In January 2013, the Bureau adopted the 2013 ATR Final Rule and the 2013 Mortgage Servicing Final Rules, along with other related rules mentioned above. Part VIII of the supplementary information to each of these rules set forth the Bureau's analyses and determinations under the RFA with respect to those rules. *See* 78 FR 10861 (Regulation X), 78 FR 10994 (Regulation Z—servicing), 78 FR 6575 (Regulation Z—ATR). The Bureau also notes that any lack of clarity, along with the resulting potential confusion or compliance burden, was inadvertent; as such, its Regulatory Flexibility analyses considered the impact of the provisions at issue in this rule as if no such lack of clarity existed. Because these rules qualify as ''a series of closely related rules,'' for purposes of the RFA, the Bureau relies on those analyses and determines that it has met or exceeded the IRFA requirement.

In the alternative, the Bureau also concludes that the proposed rule would not have a significant impact on a substantial number of small entities. As noted, the proposal generally clarifies the existing rule. These changes would not have a material impact on small entities. In the instance of the small servicer exemption, the rule likely reduces burden for the affected firms. Therefore, the Bureau affirms that the proposal would not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

This proposed rule would amend 12 CFR part 1026 (Regulation Z), which implements the Truth in Lending Act (TILA), and 12 CFR part 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA). Regulations Z and X currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation Z is 3170–0015 and for Regulation X is 3170–0016. However, the Bureau has determined that this proposed rule would not materially alter these collections of information or impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Comments on this determination may be submitted to the Bureau as instructed in the **ADDRESSES** section of this notice and to the attention of the Paperwork Reduction Act Officer.

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgage servicing, Mortgages, Recordkeeping requirements, Reporting.

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to further amend Regulation X, 12 CFR part 1024, as amended by the final rule published on February 14, 2013, 78 FR 10695, and further amend Regulation Z, 12 CFR part 1026, as amended by the final rules published on January 30, 2013, 78 FR 6407, and February 14, 2013, 78 FR 10901, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

■ 2. In subpart A, the heading is revised to read as follows:

Subpart A—General Provisions

■ 3. Section 1024.5 is amended by adding paragraph (c) to read as follows:

§ 1024.5 Coverage of RESPA.

* * * * *

(c) *Relation to State laws.* (1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other

[37] 5 U.S.C. 601 *et seq.*

[38] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[39] 5 U.S.C. 605(b).

[40] 5 U.S.C. 605(c).

[41] 5 U.S.C. 609.

law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the **Federal Register**. ''Law'' as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.33(d).

Subpart B—Mortgage Settlement and Escrow Accounts

■ 4. Section 1024.13 is removed and reserved.

■ 5. In Supplement I to Part 1024, Subpart A is added to read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

Subpart A—General Provisions

Section 1024.5 Coverage of RESPA

5(c) Relation to State laws.

Paragraph 5(c)(1).

1. State laws that are in conflict with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers do not conflict with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 6. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 7. Section 1026.41 is amended by revising paragraphs (a)(1), (e)(4)(ii), and (e)(4)(iii) to read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

(a) *In general.* (1) *Scope.* This section applies to a closed-end consumer credit transaction secured by a dwelling, unless an exemption in paragraph (e) of this section applies. A closed-end consumer credit transaction secured by a dwelling is referred to as a *mortgage loan* for purposes of this section.

* * * * *

(e) * * *

(4) * * *

(ii) *Small servicer defined.* A small servicer is a servicer that either:

(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5.

(iii) *Small servicer determination.* In determining whether a servicer is a small servicer, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

(A) Mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees.

(B) Reverse mortgage transactions.

(C) Mortgage loans secured by consumers' interests in timeshare plans.

* * * * *

■ 8. Appendix Q to Part 1026-Standards for Determining Monthly Debt and Income is revised to read as follows:

Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income

Section 1026.43(e)(2)(vi) provides that, to satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), the ratio of the consumer's total monthly debt payments to total monthly income at the time of consummation cannot exceed 43 percent. Section 1026.43(e)(2)(vi)(A) requires the creditor to calculate the ratio of the consumer's total monthly debt payments to total monthly income using the following standards, with additional requirements for calculating debt and income appearing in § 1026.43(e)(2)(vi)(B).

I. Consumer Employment Related Income

A. Stability of Income.

1. *Effective Income.* Income may not be used in calculating the consumer's debt-to-income ratio if it comes from any source that cannot be verified, is not stable, or will not continue.

2. *Verifying Employment History.*

a. The creditor must verify the consumer's employment for the most recent two full years, and the creditor must require the consumer to:

i. Explain any gaps in employment that span one or more months, and

ii. Indicate if he/she was in school or the military for the recent two full years, providing evidence supporting this claim, such as college transcripts, or discharge papers.

b. Allowances can be made for seasonal employment, typical for the building trades and agriculture, if documented by the creditor.

Note: A consumer with a 25 percent or greater ownership interest in a business is considered self-employed and will be evaluated as a self-employed consumer.

3. *Analyzing a Consumer's Employment Record.*

a. When analyzing a consumer's employment, creditors must examine:

i. The consumer's past employment record; and

ii. The employer's confirmation of current, ongoing employment status.

Note: Creditors may assume that employment is ongoing if a consumer's employer verifies current employment and does not indicate that employment has been, or is set to be terminated. Creditors should not rely upon a verification of current employment that includes an affirmative statement that the employment is likely to cease, such as a statement that indicates the employee has given (or been given) notice of employment suspension or termination.

b. Creditors may favorably consider the stability of a consumer's income if he/she changes jobs frequently within the same line of work, but continues to advance in income or benefits. In this analysis, income stability takes precedence over job stability.

4. *Consumers Returning to Work After an Extended Absence.* A consumer's income may be considered effective and stable when recently returning to work after an extended absence if he/she:

a. Is employed in the current job for six months or longer; and

b. Can document a two year work history prior to an absence from employment using:

i. Traditional employment verifications; and/or

ii. Copies of IRS Form W–2s or pay stubs.

Note: An acceptable employment situation includes individuals who took several years off from employment to raise children, then returned to the workforce.

c. Important: Situations not meeting the criteria listed above may not be used in qualifying. Extended absence is defined as six months.

B. Salary, Wage and Other Forms of Income.

1. *General Policy on Consumer Income Analysis.*

a. The income of each consumer who will be obligated for the mortgage debt and whose income is being relied upon in determining ability to repay must be analyzed to determine whether his/her income level can be reasonably expected to continue.

b. In most cases, a consumer's income is limited to salaries or wages. Income from other sources can be considered as effective, when properly verified and documented by the creditor.

Notes:

i. Effective income for consumers planning to retire during the first three-year period must include the amount of:

a. Documented retirement benefits;

b. Social Security payments; or

c. Other payments expected to be received in retirement.

ii. Creditors must not ask the consumer about possible, future maternity leave.

iii. Creditors may assume that salary or wage income from employment verified in accordance with section I.A.3 above can be reasonably expected to continue if a consumer's employer verifies current employment and income and does not indicate that employment has been, or is set to be terminated. Creditors should not assume that income can be reasonably expected to continue if a verification of current employment that includes an affirmative statement that the employment is likely to cease, such as a statement that indicates the employee has given (or been given) notice of employment suspension or termination.

2. *Overtime and Bonus Income.*

a. Overtime and bonus income can be used to qualify the consumer if he/she has received this income for the past two years, and documentation submitted for the loan does not indicate this income will likely cease. If, for example, the employment verification states that the overtime and bonus income is unlikely to continue, it may not be used in qualifying.

b. The creditor must develop an average of bonus or overtime income for the past two years. Periods of overtime and bonus income less than two years may be acceptable, provided the creditor can justify and document in writing the reason for using the income for qualifying purposes.

3. *Establishing an Overtime and Bonus Income Earning Trend.*

a. The creditor must establish and document an earnings trend for overtime and bonus income. If either type of income shows a continual decline, the creditor must document in writing a sound rationalization for including the income when qualifying the consumer.

b. A period of more than two years must be used in calculating the average overtime and bonus income if the income varies significantly from year to year.

4. *Qualifying Part-Time Income.*

a. Part-time and seasonal income can be used to qualify the consumer if the creditor documents that the consumer has worked the part-time job uninterrupted for the past two years, and plans to continue. Many low and moderate income families rely on part-time and seasonal income for day to day needs, and creditors should not restrict consideration of such income when qualifying the income of these consumers.

b. Part-time income received for less than two years may be included as effective income, provided that the creditor justifies and documents that the income is likely to continue.

c. Part-time income not meeting the qualifying requirements may not be used in qualifying.

Note: For qualifying purposes, ''part-time'' income refers to employment taken to supplement the consumer's income from regular employment; part-time employment is not a primary job and it is worked less than 40 hours.

5. *Income from Seasonal Employment.*

a. Seasonal income is considered uninterrupted, and may be used to qualify the consumer, if the creditor documents that the consumer:

i. Has worked the same job for the past two years, and

ii. Expects to be rehired the next season.

b. Seasonal employment includes, but is not limited to:

i. Umpiring baseball games in the summer; or

ii. Working at a department store during the holiday shopping season.

6. *Primary Employment Less Than 40 Hour Work Week.*

a. When a consumer's primary employment is less than a typical 40-hour work week, the creditor should evaluate the stability of that income as regular, on-going primary employment.

b. Example: A registered nurse may have worked 24 hours per week for the last year. Although this job is less than the 40-hour work week, it is the consumer's primary employment, and should be considered effective income.

7. *Commission Income.*

a. Commission income must be averaged over the previous two years. To qualify commission income, the consumer must provide:

i. Copies of signed tax returns for the last two years; and

ii. The most recent pay stub.

b. Consumers whose commission income was received for more than one year, but less than two years may be considered favorably if the underwriter can:

i. Document the likelihood that the income will continue, and

ii. Soundly rationalize accepting the commission income.

Notes:

i. Unreimbursed business expenses must be subtracted from gross income.

ii. A commissioned consumer is one who receives more than 25 percent of his/her annual income from commissions.

iii. A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns.

8. *Qualifying Commission Income Earned for Less Than One Year.*

a. Commission income earned for less than one year is not considered effective income. Exceptions may be made for situations in which the consumer's compensation was changed from salary to commission within a similar position with the same employer.

b. A consumer's income may also qualify when the portion of earnings not attributed to commissions would be sufficient to qualify the consumer for the mortgage.

9. *Employer Differential Payments.* If the employer subsidizes a consumer's mortgage payment through direct payments, the amount of the payments:

a. Is considered gross income, and

b. Cannot be used to offset the mortgage payment directly, even if the employer pays the servicing creditor directly.

10. *Retirement Income.* Retirement income must be verified from the former employer, or from Federal tax returns. If any retirement income, such as employer pensions or 401(k)'s, will cease within the first full three years of the mortgage loan, such income may not be used in qualifying.

11. *Social Security Income.* Social Security income must be verified by a Social Security Administration benefit verification letter (sometimes called a ''proof of income letter,'' ''budget letter,'' ''benefits letter,'' or ''proof of award letter''). If any benefits expire within the first full three years of the loan, the income source may not be used in qualifying.

Notes:

i. If the Social Security Administration benefit verification letter does not indicate a defined expiration date within three years of loan origination, the creditor shall consider the income effective and likely to continue. Pending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the benefit payments are not likely to continue.

ii. Some portion of Social Security income may be ''grossed up'' if deemed nontaxable by the IRS.

12. *Automobile Allowances and Expense Account Payments.*

a. Only the amount by which the consumer's automobile allowance or expense account payments exceed actual expenditures may be considered income.

b. To establish the amount to add to gross income, the consumer must provide the following:

i. IRS Form 2106, Employee Business Expenses, for the previous two years; and

ii. Employer verification that the payments will continue.

c. If the consumer uses the standard per-mile rate in calculating automobile expenses, as opposed to the actual cost method, the portion that the IRS considers depreciation may be added back to income.

d. Expenses that must be treated as recurring debt include:

i. The consumer's monthly car payment; and

ii. Any loss resulting from the calculation of the difference between the actual expenditures and the expense account allowance.

C. Consumers Employed by a Family Owned Business.

1. *Income Documentation Requirement.*

In addition to normal employment verification, a consumer employed by a family owned business is required to provide evidence that he/she is not an owner of the business, which may include:

a. Copies of signed personal tax returns, or

b. A signed copy of the corporate tax return showing ownership percentage.

Note: A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns.

D. General Information on Self-Employed Consumers and Income Analysis.

1. *Definition: Self-Employed Consumer.* A consumer with a 25 percent or greater ownership interest in a business is considered self-employed.

2. *Types of Business Structures.* There are four basic types of business structures. They include:

a. Sole proprietorships;

b. Corporations;

c. Limited liability or ''S'' corporations; and

d. Partnerships.

3. *Minimum Length of Self Employment.*

a. Income from self-employment is considered stable, and effective, if the consumer has been self-employed for two or more years.

b. Due to the high probability of failure during the first few years of a business, the requirements described in the table below are necessary for consumers who have been self-employed for less than two years.

If the period of self-employment is:	Then:
Between one and two years	For the individual's income to be effective, the individual must have at least two years of documented previous successful employment in the line of work in which the individual is self-employed, or in a related occupation. Note: A combination of one year of employment and formal education or training in the line of work the individual is self-employed or in a related occupation is also acceptable.
Less than one year	The income from the consumer may not be considered effective income.

4. *General Documentation Requirements for Self-Employed Consumers.* Self-employed consumers must provide the following documentation:

a. Signed, dated individual tax returns, with all applicable tax schedules for the most recent two years;

b. For a corporation, ''S'' corporation, or partnership, signed copies of Federal business income tax returns for the last two years, with all applicable tax schedules; and

c. Year to date profit and loss (P&L) statement and balance sheet.

5. *Establishing a Self-Employed Consumer's Earnings Trend.*

a. When qualifying income, the creditor must establish the consumer's earnings trend from the previous two years using the consumer's tax returns.

b. If a consumer:

i. Provides quarterly tax returns, the income analysis may include income through the period covered by the tax filings, or

ii. Is not subject to quarterly tax returns, or does not file them, then the income shown on the P&L statement may be included in the analysis, provided the income stream based on the P&L is consistent with the previous years' earnings.

c. If the P&L statements submitted for the current year show an income stream considerably greater than what is supported by the previous year's tax returns, the creditor must base the income analysis solely on the income verified through the tax returns.

d. If the consumer's earnings trend for the previous two years is downward and the most recent tax return or P&L is less than the prior year's tax return, the consumer's most recent year's tax return or P&L must be used to calculate his/her income.

6. *Analyzing the Business's Financial Strength.*

The creditor must consider the business's financial strength by examining annual earnings. Annual earnings that are stable or increasing are acceptable, while businesses that show a significant decline in income over the analysis period are not acceptable.

E. Income Analysis: Individual Tax Returns (IRS Form 1040).

1. *General Policy on Adjusting Income Based on a Review of IRS Form 1040.* The amount shown on a consumer's IRS Form 1040 as adjusted gross income must either be increased or decreased based on the creditor's analysis of the individual tax return and any related tax schedules.

2. *Guidelines for Analyzing IRS Form 1040.* The table below contains guidelines for analyzing IRS Form 1040:

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IRS Form 1040 heading	Description
Wages, Salaries and Tips	An amount shown under this heading may indicate that the individual: • Is a salaried employee of a corporation, or • Has other sources of income. This section may also indicate that the spouse is employed, in which case the spouse's income must be subtracted from the consumer's adjusted gross income.
Business Income and Loss (from Schedule C)	Sole proprietorship income calculated on Schedule C is business income. Depreciation or depletion may be added back to the adjusted gross income.
Rents, Royalties, Partnerships (from Schedule E)	Any income received from rental properties or royalties may be used as income, after adding back any depreciation shown on Schedule E.
Capital Gain and Losses (from Schedule D)	Capital gains or losses generally occur only one time, and should not be considered when determining effective income. However, if the individual has a constant turnover of assets resulting in gains or losses, the capital gain or loss must be considered when determining the income. Three years' tax returns are required to evaluate an earning trend. If the trend: • Results in a gain, it may be added as effective income, or • Consistently shows a loss, it must be deducted from the total income. Creditor must document anticipated continuation of income through verified assets. *Example:* A creditor can consider the capital gains for an individual who purchases old houses, remodels them, and sells them for profit.
Interest and Dividend Income (from Schedule B)	This taxable/tax-exempt income may be added back to the adjusted gross income only if it: • Has been received for the past two years; and • Is expected to continue. If the interest-bearing asset will be liquidated as a source of the cash investment, the creditor must appropriately adjust the amount.
Farm Income or Loss (from Schedule F)	Any depreciation shown on Schedule F may be added back to the adjusted gross income.
IRA Distributions, Pensions, Annuities, and Social Security Benefits	The non-taxable portion of these items may be added back to the adjusted gross income, if the income is expected to continue for the first three years of the mortgage.
Adjustments to Income	Adjustments to income may be added back to the adjusted gross income if they are: • IRA and Keogh retirement deductions; • Penalties on early withdrawal of savings; • Health insurance deductions; and • Alimony payments.
Employee Business Expenses	Employee business expenses are actual cash expenses that must be deducted from the adjusted gross income.

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F. Income Analysis: Corporate Tax Returns (IRS Form 1120).

1. *Description: Corporation.* A corporation is a State-chartered business owned by its stockholders.

2. *Need To Obtain Consumer Percentage of Ownership Information.*

a. Corporate compensation to the officers, generally in proportion to the percentage of ownership, is shown on the:

i. Corporate tax return IRS Form 1120; and

ii. Individual tax returns.

b. When a consumer's percentage of ownership does not appear on the tax returns, the creditor must obtain the information from the corporation's accountant, along with evidence that the consumer has the right to any compensation.

3. *Analyzing Corporate Tax Returns.*

a. In order to determine a consumer's self-employed income from a corporation the adjusted business income must:

i. Be determined; and

ii. Multiplied by the consumer's percentage of ownership in the business.

b. The table below describes the items found on IRS Form 1120 for which an adjustment must be made in order to determine adjusted business income.

Adjustment item	Description of adjustment
Depreciation and Depletion	Add the corporation's depreciation and depletion back to the after-tax income.
Taxable Income	Taxable income is the corporation's net income before Federal taxes. Reduce taxable income by the tax liability.
Fiscal Year vs. Calendar Year	If the corporation operates on a fiscal year that is different from the calendar year, an adjustment must be made to relate corporate income to the individual tax return.
Cash Withdrawals	The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating.

G. Income Analysis: ''S'' Corporation Tax Returns (IRS Form 1120S).

1. *Description: ''S'' Corporation.*

a. An ''S'' corporation is generally a small, start-up business, with gains and losses passed to stockholders in proportion to each stockholder's percentage of business ownership.

b. Income for owners of ''S'' corporations comes from IRS Form W–2 wages, and is taxed at the individual rate. The IRS Form 1120S, Compensation of Officers line item is transferred to the consumer's individual IRS Form 1040.

2. *Analyzing ''S'' Corporation Tax Returns.*

a. ''S'' corporation depreciation and depletion may be added back to income in proportion to the consumer's share of the corporation's income.

b. In addition, the income must also be reduced proportionately by the total obligations payable by the corporation in less than one year.

c. Important: The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating, and must be considered in the income analysis.

H. Income Analysis: Partnership Tax Returns (IRS Form 1065).

1. *Description: Partnership.*

a. A partnership is formed when two or more individuals form a business, and share in profits, losses, and responsibility for running the company.

b. Each partner pays taxes on his/her proportionate share of the partnership's net income.

2. *Analyzing Partnership Tax Returns.*

a. Both general and limited partnerships report income on IRS Form 1065, and the partners' share of income is carried over to Schedule E of IRS Form 1040.

b. The creditor must review IRS Form 1065 to assess the viability of the business. Both depreciation and depletion may be added back to the income in proportion to the consumer's share of income.

c. Income must also be reduced proportionately by the total obligations payable by the partnership in less than one year.

d. Important: Cash withdrawals from the partnership may have a severe negative impact on the partnership's ability to continue operating, and must be considered in the income analysis.

II. Non-Employment Related Consumer Income

A. Alimony, Child Support, and Maintenance Income Criteria. Alimony, child support, or maintenance income may be considered effective, if:

1. Payments are likely to be received consistently for the first three years of the mortgage;

2. The consumer provides the required documentation, which includes a copy of the:

i. Final divorce decree;

ii. Legal separation agreement;

iii. Court order; or

iv. Voluntary payment agreement; and

3. The consumer can provide acceptable evidence that payments have been received during the last 12 months, such as:

i. Cancelled checks;

ii. Deposit slips;

iii. Tax returns; or

iv. Court records.

Notes:

i. Periods less than 12 months may be acceptable, provided the creditor can adequately document the payer's ability and willingness to make timely payments.

ii. Child support may be ''grossed up'' under the same provisions as non-taxable income sources.

B. Investment and Trust Income.

1. *Analyzing Interest and Dividends.*

a. Interest and dividend income may be used as long as tax returns or account statements support a two-year receipt history. This income must be averaged over the two years.

b. Subtract any funds that are derived from these sources, and are required for the cash investment, before calculating the projected interest or dividend income.

2. *Trust Income.*

a. Income from trusts may be used if guaranteed, constant payments will continue for at least the first three years of the mortgage term as evidenced by trust income documentation.

b. Required trust income documentation includes a copy of the Trust Agreement or other trustee statement, confirming the:

i. Amount of the trust;

ii. Frequency of distribution; and

iii. Duration of payments.

c. Trust account funds may be used for the required cash investment if the consumer provides adequate documentation that the withdrawal of funds will not negatively affect income. The consumer may use funds from the trust account for the required cash investment, but the trust income used to determine repayment ability cannot be affected negatively by its use.

3. *Notes Receivable Income.*

a. In order to include notes receivable income, the consumer must provide:

i. A copy of the note to establish the amount and length of payment, and

ii. Evidence that these payments have been consistently received for the last 12 months through deposit slips, cancelled checks, or tax returns.

b. If the consumer is not the original payee on the note, the creditor must establish that the consumer is able to enforce the note.

4. *Eligible Investment Properties.*

Follow the steps in the table below to calculate an investment property's income or loss if the property to be subject to a mortgage is an eligible investment property.

1	Subtract the monthly payment (PITI) from the monthly net rental income of the subject property. Note: Calculate the monthly net rental by taking the gross rents, and subtracting the 25 percent reduction for vacancies and repairs.
2	Does the calculation in Step 1 yield a positive number? • If *yes,* add the number to the consumer's monthly gross income. • If *no,* and the calculation yields a negative number, consider it a recurring monthly obligation.

C. Military, Government Agency, and Assistance Program Income.

1. *Military Income.*

a. Military personnel not only receive base pay, but often times are entitled to additional forms of pay, such as:

i. Income from variable housing allowances;

ii. Clothing allowances;

iii. Flight or hazard pay;

iv. Rations; and

v. Proficiency pay.

b. These types of additional pay are acceptable when analyzing a consumer's income as long as the probability of such pay to continue is verified in writing.

Note: The tax-exempt nature of some of the above payments should also be considered.

2. *VA Benefits.*

a. Direct compensation for service-related disabilities from the Department of Veterans Affairs (VA) is acceptable, provided the creditor receives documentation from the VA.

b. Education benefits used to offset education expenses are not acceptable.

3. *Government Assistance Programs.*

a. Income received from government assistance programs is acceptable as long as the paying agency provides documentation indicating that the income is expected to continue for at least three years.

b. If the income from government assistance programs will not be received for at least three years, it may not be used in qualifying.

c. Unemployment income must be documented for two years, and there must be reasonable assurance that this income will continue. This requirement may apply to seasonal employment.

Note: Social Security income is acceptable as provided in section I.B.11.

4. *Mortgage Credit Certificates.*

a. If a government entity subsidizes the mortgage payments either through direct payments or tax rebates, these payments may be considered as acceptable income.

b. Either type of subsidy may be added to gross income, or used directly to offset the mortgage payment, before calculating the qualifying ratios.

5. *Homeownership Subsidies.*

a. A monthly subsidy may be treated as income, if a consumer is receiving subsidies under the housing choice voucher home ownership option from a public housing agency (PHA). Although continuation of the homeownership voucher subsidy beyond the first year is subject to Congressional appropriation, for the purposes of underwriting, the subsidy will be assumed to continue for at least three years.

b. If the consumer is receiving the subsidy directly, the amount received is treated as income. The amount received may also be treated as nontaxable income and be ''grossed up'' by 25 percent, which means that the amount of the subsidy, plus 25 percent of that subsidy may be added to the consumer's income from employment and/or other sources.

c. Creditors may treat this subsidy as an ''offset'' to the monthly mortgage payment (that is, reduce the monthly mortgage payment by the amount of the home ownership assistance payment before dividing by the monthly income to determine the payment-to-income and debt-to-income ratios). The subsidy payment must not pass through the consumer's hands.

d. The assistance payment must be:

i. Paid directly to the servicing creditor; or

ii. Placed in an account that only the servicing creditor may access.

Note: Assistance payments made directly to the consumer must be treated as income.

D. Rental Income.

1. *Analyzing the Stability of Rental Income.*

a. Rent received for properties owned by the consumer is acceptable as long as the creditor can document the stability of the rental income through:

i. A current lease;

ii. An agreement to lease; or

iii. A rental history over the previous 24 months that is free of unexplained gaps greater than three months (such gaps could be explained by student, seasonal, or military renters, or property rehabilitation).

b. A separate schedule of real estate is not required for rental properties as long as all properties are documented on the Uniform Residential Loan Application.

Note: The underwriting analysis may not consider rental income from any property being vacated by the consumer, except under the circumstances described below.

2. *Rental Income From Consumer Occupied Property.*

a. The rent for multiple unit property where the consumer resides in one or more units and charges rent to tenants of other units may be used for qualifying purposes.

b. Projected rent for the tenant-occupied units only may:

i. Be considered gross income, only after deducting vacancy and maintenance factors, and

ii. Not be used as a direct offset to the mortgage payment.

3. *Income from Roommates in a Single Family Property.*

a. Income from roommates in a single family property occupied as the consumer's primary residence is not acceptable. Rental income from boarders however, is acceptable.

b. The rental income may be considered effective, if shown on the consumer's tax return. If not on the tax return, rental income paid by the boarder may not be used in qualifying.

4. *Documentation Required To Verify Rental Income.* Analysis of the following required documentation is necessary to verify all consumer rental income:

a. IRS Form 1040 Schedule E; and

b. Current leases/rental agreements.

5. *Analyzing IRS Form 1040 Schedule E.*

a. The IRS Form 1040 Schedule E is required to verify all rental income. Depreciation shown on Schedule E may be added back to the net income or loss.

b. Positive rental income is considered gross income for qualifying purposes, while negative income must be treated as a recurring liability.

c. The creditor must confirm that the consumer still owns each property listed, by comparing Schedule E with the real estate owned section of the Uniform Residential Loan Application (URLA).

6. *Using Current Leases To Analyze Rental Income.*

a. The consumer can provide a current signed lease or other rental agreement for a property that was acquired since the last income tax filing, and is not shown on Schedule E.

b. In order to calculate the rental income:

i. Reduce the gross rental amount by 25 percent for vacancies and maintenance;

ii. Subtract PITI and any homeowners association dues; and

iii. Apply the resulting amount to income, if positive, or recurring debts, if negative.

7. *Exclusion of Rental Income From Property Being Vacated by the Consumer.* Underwriters may not consider any rental income from a consumer's principal residence that is being vacated in favor of another principal residence, except under the conditions described below:

Notes:

i. This policy assures that a consumer either has sufficient income to make both mortgage payments without any rental income, or has an equity position not likely to result in defaulting on the mortgage on the property being vacated.

ii. This applies solely to a principal residence being vacated in favor of another principal residence. It does not apply to existing rental properties disclosed on the loan application and confirmed by tax returns (Schedule E of form IRS 1040).

8. *Policy Exceptions Regarding the Exclusion of Rental Income From a Principal Residence Being Vacated by a Consumer.*

When a consumer vacates a principal residence in favor of another principal residence, the rental income, reduced by the appropriate vacancy factor, may be considered in the underwriting analysis under the circumstances listed in the table below.

Exception	Description
Relocations	The consumer is relocating with a new employer, or being transferred by the current employer to an area not within reasonable and locally-recognized commuting distance. A properly executed lease agreement (that is, a lease signed by the consumer and the lessee) of at least one year's duration after the loan is closed is required. Note: Underwriters should also obtain evidence of the security deposit and/or evidence the first month's rent was paid to the homeowner.
Sufficient Equity in Vacated Property	The consumer has a loan-to-value ratio of 75 percent or less, as determined either by: • A current (no more than six months old) residential appraisal, or • Comparing the unpaid principal balance to the original sales price of the property. Note: The appraisal, in addition to using forms Fannie Mae1004/Freddie Mac 70, may be an exterior-only appraisal using form Fannie Mae/Freddie Mac 2055, and for condominium units, form Fannie Mae 1075/Freddie Mac 466.

E. Non-Taxable and Projected Income.

1. *Types of Non-Taxable Income.*

Certain types of regular income may not be subject to Federal tax. Such types of non-taxable income include:

a. Some portion of Social Security, some Federal government employee retirement income, Railroad Retirement Benefits, and some State government retirement income;

b. Certain types of disability and public assistance payments;

c. Child support;

d. Military allowances; and

e. Other income that is documented as being exempt from Federal income taxes.

2. *Adding Non-Taxable Income to a Consumer's Gross Income.*

a. The amount of continuing tax savings attributed to regular income not subject to Federal taxes may be added to the consumer's gross income.

b. The percentage of non-taxable income that may be added cannot exceed the appropriate tax rate for the income amount. Additional allowances for dependents are not acceptable.

c. The creditor:

i. Must document and support the amount of income grossed up for any non-taxable income source, and

ii. Should use the tax rate used to calculate the consumer's last year's income tax.

Note: If the consumer is not required to file a Federal tax return, the tax rate to use is 25 percent.

3. *Analyzing Projected Income.*

a. Projected or hypothetical income is not acceptable for qualifying purposes. However, exceptions are permitted for income from the following sources:

i. Cost-of-living adjustments;

ii. Performance raises; and

iii. Bonuses.

b. For the above exceptions to apply, the income must be:

i. Verified in writing by the employer; and

ii. Scheduled to begin within 60 days of loan closing.

4. *Projected Income for New Job.*

a. Projected income is acceptable for qualifying purposes for a consumer scheduled to start a new job within 60 days of loan closing if there is a guaranteed, non-revocable contract for employment.

b. The creditor must verify that the consumer will have sufficient income or cash reserves to support the mortgage payment and any other obligations between loan closing and the start of employment. Examples of this type of scenario are teachers whose contracts begin with the new school year, or physicians beginning a residency after the loan closes.

c. The income does not qualify if the loan closes more than 60 days before the consumer starts the new job.

III. Consumer Liabilities: Recurring Obligations

1. *Types of Recurring Obligation.* Recurring obligations include:

a. All installment loans;

b. Revolving charge accounts;

c. Real estate loans;

d. Alimony;

e. Child support; and

f. Other continuing obligations.

2. *Debt to Income Ratio Computation for Recurring Obligations.*

a. The creditor must include the following when computing the debt to income ratios for recurring obligations:

i. Monthly housing expense; and

ii. Additional recurring charges extending ten months or more, such as

a. Payments on installment accounts;

b. Child support or separate maintenance payments;

c. Revolving accounts; and

d. Alimony.

b. Debts lasting less than ten months must be included if the amount of the debt affects the consumer's ability to pay the mortgage during the months immediately after loan closing, especially if the consumer will have limited or no cash assets after loan closing.

Note: Monthly payments on revolving or open-ended accounts, regardless of the balance, are counted as a liability for qualifying purposes even if the account appears likely to be paid off within 10 months or less.

3. *Revolving Account Monthly Payment Calculation.* If the credit report shows any revolving accounts with an outstanding balance but no specific minimum monthly payment, the payment must be calculated as the greater of:

a. 5 percent of the balance; or

b. $10.

Note: If the actual monthly payment is documented from the creditor or the creditor obtains a copy of the current statement reflecting the monthly payment, that amount may be used for qualifying purposes.

4. *Reduction of Alimony Payment for Qualifying Ratio Calculation.* Since there are tax consequences of alimony payments, the creditor may choose to treat the monthly alimony obligation as a reduction from the consumer's gross income when calculating the ratio, rather than treating it as a monthly obligation.

IV. Consumer Liabilities: Contingent Liability

1. *Definition: Contingent Liability.* A contingent liability exists when an individual is held responsible for payment of a debt if another party, jointly or severally obligated, defaults on the payment.

2. *Application of Contingent Liability Policies.* The contingent liability policies described in this topic apply unless the consumer can provide conclusive evidence from the debt holder that there is no possibility that the debt holder will pursue debt collection against him/her should the other party default.

3. *Contingent Liability on Mortgage Assumptions.* Contingent liability must be considered when the consumer remains obligated on an outstanding FHA-insured, VA-guaranteed, or conventional mortgage secured by property that:

a. Has been sold or traded within the last 12 months without a release of liability, or

b. Is to be sold on assumption without a release of liability being obtained.

4. *Exemption From Contingent Liability Policy on Mortgage Assumptions.* When a mortgage is assumed, contingent liabilities need not be considered if the:

a. Originating creditor of the mortgage being underwritten obtains, from the servicer of the assumed loan, a payment history showing that the mortgage has been current during the previous 12 months, or

b. Value of the property, as established by an appraisal or the sales price on the HUD–1 Settlement Statement from the sale of the property, results in a loan-to-value (LTV) ratio of 75 percent or less.

5. *Contingent Liability on Cosigned Obligations.*

a. Contingent liability applies, and the debt must be included in the underwriting analysis, if an individual applying for a mortgage is a cosigner/co-obligor on:

i. A car loan;

ii. A student loan;

iii. A mortgage; or

iv. Any other obligation.

b. If the creditor obtains documented proof that the primary obligor has been making regular payments during the previous 12 months, and does not have a history of delinquent payments on the loan during that time, the payment does not have to be included in the consumer's monthly obligations.

V. Consumer Liabilities: Projected Obligations and Obligations Not Considered Debt

1. *Projected Obligations.*

a. Debt payments, such as a student loan or balloon-payment note scheduled to begin or come due within 12 months of the mortgage loan closing, must be included by the creditor as anticipated monthly obligations during the underwriting analysis.

b. Debt payments do not have to be classified as projected obligations if the consumer provides written evidence that the debt will be deferred to a period outside the 12-month timeframe.

c. Balloon-payment notes that come due within one year of loan closing must be considered in the underwriting analysis.

2. *Obligations Not Considered Debt.* Obligations not considered debt, and therefore not subtracted from gross income, include:

a. Federal, State, and local taxes;

b. Federal Insurance Contributions Act (FICA) or other retirement contributions, such as 401(k) accounts (including repayment of debt secured by these funds):

c. Commuting costs;

d. Union dues;

e. Open accounts with zero balances;

f. Automatic deductions to savings accounts;

g. Child care; and

h. Voluntary deductions.

■ 9. In Supplement I to Part 1026—Official Interpretations:

A. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans:*

i. Under *41(e)(4) Small servicers:*

a. Under *41(e)(4)(ii) Small servicer defined,* paragraphs 1 and 2 are revised and paragraph 3 is added.

b. Under *Paragraph 41(e)(4)(iii) Small servicer determination,* paragraph 3 is added.

B. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling:*

i. Under *43(e)(4) Qualified mortgage defined-special rules,* paragraph 4 is revised and paragraph 5 is added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.41—Periodic Statements for Residential Mortgage Loans

* * * * *

41(e)(4)(ii) Small servicer defined.

1. *Mortgage loans considered.* Pursuant to § 1026.41(a)(1), the mortgage loans considered in determining status as small servicer are closed-end consumer credit transactions secured by a dwelling, subject to the exclusions in § 1026.41(e)(4)(iii).

2. *Requirements to be a small servicer.* Pursuant to § 1026.41(e)(4)(ii)(A), to qualify as a small servicer, a servicer must service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. There are two elements to this requirement. First, a servicer, together with any affiliates, must service 5,000 or fewer mortgage loans. Second, a servicer must service only mortgage loans for which the servicer (or an affiliate) is the creditor or assignee. To be the creditor or assignee of a mortgage loan, the servicer (or an affiliate) must either currently own the mortgage loan or must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). A servicer is not a small servicer if it services any mortgage loans for which the servicer or an affiliate is not the creditor or assignee (that is, for which the servicer or an affiliate is not the owner or was not the originator). The following two examples demonstrate circumstances in which a servicer would not qualify as a small servicer because it did not meet both requirements for determining a servicer's status as a small servicer:

i. A servicer services 3,000 mortgage loans, all of which it or an affiliate owns or originated. An affiliate of the servicer services 4,000 other mortgage loans, all of which it or an affiliate owns or originated. Because the number of mortgage loans serviced by a servicer is determined by counting the mortgage loans serviced by a servicer together with any affiliates, both of these servicers are considered to be servicing 7,000 mortgage loans and neither servicer is a small servicer.

ii. A servicer services 3,100 mortgage loans—3,000 mortgage loans it owns or originated and 100 mortgage loans it neither owns nor originated, but for which it owns the mortgage servicing rights. The servicer is not a small servicer because it services mortgage loans for which the servicer (or an affiliate) is not the creditor or assignee, notwithstanding that the servicer services fewer than 5,000 mortgage loans.

3. *Master servicing and subservicing.* A servicer that qualifies as a small servicer does not lose its small servicer status if it retains a subservicer, as that term is defined in 12 CFR 1024.31, to service any of its mortgage loans. A subservicer can gain the benefit of the small servicer exemption only if (1) the master servicer, as that term is defined in 12 CFR 1024.31, is a small servicer and (2) the subservicer is a small servicer. A subservicer generally will not qualify as a small servicer because it does not own or did not originate the mortgage loans it subservices—unless it is an affiliate of a master servicer that qualifies as a small servicer. The following

examples demonstrate the application of the small servicer exemption for different forms of servicing relationships:

i. A credit union services 4,000 mortgage loans, all of which it originated or owns. The credit union retains a credit union service organization, that is not an affiliate, to subservice 1,000 of the mortgage loans. The credit union is a small servicer and, thus, can gain the benefit of the small servicer exemption for the 3,000 mortgage loans the credit union services itself. The credit union service organization is not a small servicer because it services mortgage loans it does not own or did not originate. Accordingly, the credit union service organization does not gain the benefit of the small servicer exemption and, thus, must comply with any applicable mortgage servicing requirements for the 1,000 mortgage loans it subservices.

ii. A bank holding company, through a lender subsidiary, owns or originated 4,000 mortgage loans. All mortgage servicing rights for the 4,000 mortgage loans are owned by a wholly owned master servicer subsidiary. Servicing for the 4,000 mortgage loans is conducted by a wholly owned subservicer subsidiary. The bank holding company controls all of these subsidiaries and, thus, they are affiliates of the bank holding company pursuant 12 CFR 1026.32(b)(2). Because the master servicer and subservicer service 5,000 or fewer mortgage loans, and because all the mortgage loans are owned or originated by an affiliate, the master servicer and the subservicer both qualify for the small servicer exemption for all 4,000 mortgage loans.

iii. A nonbank servicer services 4,000 mortgage loans, all of which it originated or owns. The servicer retains a ''component servicer'' to assist it with servicing functions. The component servicer is not engaged in ''servicing'' as defined in 12 CFR 1024.2; that is, the component servicer does not receive any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and does not make the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. The component servicer is not a subservicer pursuant to 12 CFR 1024.31 because it is not engaged in servicing, as that term is defined in 12 CFR 1024.2. The nonbank servicer is a small servicer and, thus, can gain the benefit of the small servicer exemption with regard to all 4,000 mortgage loans it services.

41(e)(4)(iii) Small servicer determination.

* * * * *

3. *Mortgage loans not considered in determining whether a servicer is a small servicer.* Mortgage loans that are not considered for purposes of determining whether a servicer is a small servicer pursuant to § 1026.41(e)(4)(iii), are not considered either for determining whether a servicer, together with any affiliates, services 5,000 or fewer mortgage loans or whether a servicer is servicing only mortgage loans that it owns or originated. For example, assume a servicer services 5,400 mortgage loans. Of these mortgage loans, the servicer owns or originated 4,800 mortgage loans, services 300 reverse mortgage transactions that it does not own or did not originate, and voluntarily services 300 mortgage loans that it does not own or did not originate for an unaffiliated non-profit organization for which the servicer does not receive any compensation or fees. Neither the reverse mortgage transactions nor the mortgage loans voluntarily serviced by the servicer are considered in determining whether a servicer is a small servicer. Thus, because the only mortgage loans considered are the 4,800 other mortgage loans serviced by the servicer, and the servicer owns or originated each of those mortgage loans, the servicer is considered a small servicer and qualifies for the small servicer exemption with regard to all 5,400 mortgage loans it services. Note that reverse mortgages and mortgage loans secured by consumers' interests in timeshare plans, in addition to not being considered in determining small servicer qualification, also are exempt from the requirements of the § 1026.41. In contrast, although charitably serviced mortgage loans, as defined by § 1026.41(e)(4)(iii), are likewise not considered in determining small servicer qualification, they are not exempt from the requirements of § 1026.41. Thus, a servicer that does *not* qualify as a small servicer would not have to provide periodic statements for reverse mortgages and timeshare plans because they are exempt from the rule, but would have to provide periodic statements for mortgage loans it charitably services.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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43(e)(4) Qualified mortgage defined—special rules.

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4. *Eligible for purchase, guarantee, or insurance.* To satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by Fannie Mae or Freddie Mac or insured or guaranteed by one of the Agencies (the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS)). Rather, § 1026.43(e)(4)(ii) requires only that the creditor determine that the loan is eligible (*i.e.,* meets the criteria) for such purchase, guarantee, or insurance at consummation. For example, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) for that loan to be a qualified mortgage; however, the loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), including satisfying any requirements regarding consideration and verification of a consumer's income or assets, credit history, and debt-to-income ratio or residual income. To determine eligibility for purchase or guarantee, a creditor may rely on a valid underwriting recommendation provided by a GSE or Agency automated underwriting systems (AUS); compliance with the standards in the GSE or Agency written guide in effect at the time; or a written agreement between the creditor and a GSE or Agency that permits variation from the standards of the written guides and/or variation from the AUSs, in effect at the time. However, the creditor need not satisfy standards that are wholly unrelated to assessing a consumer's ability to repay that the creditor is required to perform such as requirements related to selling, securitizing, or delivering already consummated loans and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing. Accordingly, a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, for example, if:

i. The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the standards of those guides; or

ii. The creditor inputs information accurately into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS, the non-satisfaction of which would invalidate that recommendation:

A. An ''Approve/Eligible'' recommendation from Desktop Underwriter (DU); or

B. A risk class of ''Accept'' and purchase eligibility of ''Freddie Mac Eligible'' from Loan Prospector (LP).

5. *Repurchase and indemnification demands.* A repurchase or indemnification demand by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands are not related to eligibility criteria at consummation. *See* comment 43(e)(4)-4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealings over a particular demand, depending on the facts and

circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:

i. Assume eligibility to purchase a loan was based in part on the consumer's employment income of $50,000 per year. The creditor uses the income figure in obtaining an approve/eligible recommendation from DU. A quality control review, however, later determines that the documentation provided and verified by the creditor to comply with Fannie Mae requirements did not support the reported income of $50,000 per year. As a result, Fannie Mae demands that the creditor repurchase the loan. Assume that the quality control review is accurate, and that DU would not have issued an approve/eligible recommendation if it had been provided the accurate income figure. The DU determination at the time of consummation was invalid because it was based on inaccurate information provided by the creditor; therefore, the loan was never a qualified mortgage.

ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted-average coupon (WAC), weighted-average maturity (WAM), and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. The reason the creditor repurchases this loan is wholly unrelated to assessing a consumer's ability to repay under § 1026.43(e)(4). The loan still meets Fannie Mae eligibility requirements and therefore remains a qualified mortgage based on these facts and circumstances.

* * * * *

Dated: April 19, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–09750 Filed 5–1–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0361; Directorate Identifier 2013–NM–026–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727 series airplanes. This proposed AD was prompted by a report of cracking in the left-side chord of the fin closure rib on the vertical stabilizer. This proposed AD would require repetitive inspections of the left and right side chords of the fin closure rib for cracking and corrosion, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct cracking and corrosion in the left and right side chords of the fin closure rib, which could lead to widespread cracking in the chords that might weaken the fin closure rib structure and result in loss of airplane control due to lack of horizontal stabilizer support.

DATES: We must receive comments on this proposed AD by June 17, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0361; Directorate Identifier 2013–NM–026–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

During a routine maintenance inspection an operator reported finding a crack on the left-side chord of the fin closure rib. The crack measured 2.4 inches long and ran along the length of the chord. Cracking on the left-side chord of the fin closure rib is the result of intergranual stress corrosion caused by the material properties of 2024–T351 extrusion from which the closure rib chord is made. This material becomes vulnerable after the surface finishes begin to break down as a result of normal in-service aging. We are

proposing this AD to detect and correct cracking and corrosion in the left and right side chords of the fin closure rib, which could lead to widespread cracking in the chords that might weaken the fin closure rib structure, and result in loss of airplane control due to lack of horizontal stabilizer support.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 727–55–0095, dated September 24, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0361.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Where Boeing Special Attention Service Bulletin 727–55–0095, dated September 24, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, this proposed AD would require repairing those conditions in one of the following ways:

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

Costs of Compliance

We estimate that this proposed AD affects 98 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	17 work-hours × $85 per hour = $1,445 per inspection cycle.	$0	$1,445 per inspection cycle.	$141,610 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2013–0361; Directorate Identifier 2013–NM–026–AD.

(a) Comments Due Date

We must receive comments by June 17, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracking in the left-side chord of the fin closure rib on the vertical stabilizer. We are issuing this AD to detect and correct cracking and corrosion in the left and right side chords of the fin closure rib, which could lead to widespread cracking in the chords that might weaken the fin closure rib structure, and result in loss of airplane control due to lack of horizontal stabilizer support.

(f) Compliance

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

(g) Detailed and High Frequency Eddy Current (HFEC) Inspections

Within 24 months after the effective date of this AD: Do a detailed inspection for cracking and corrosion of the left and right side chords of the fin closure rib, and do a HFEC inspection of the left- and right-side chords for cracking, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–55–0095, dated September 24, 2012. If any cracking or corrosion is found, before further flight, repair or replace the affected right or left-side chord using a method approved in accordance with the procedures specified in paragraph (h) of this AD. Repeat the detailed inspection and HFEC inspection thereafter at intervals not to exceed 26 months.

(h) 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.

(i) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

(2) For Boeing 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 also review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10367 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0335; Directorate Identifier 2012–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–300, A340–200, and A340–300 series airplanes. This proposed AD was prompted by a determination that ballscrew rupture could occur on certain trimmable horizontal stabilizer actuators (THSAs). This proposed AD would require repetitive THSA ballscrew shaft integrity tests, and replacement if necessary. We are proposing this AD to detect and correct ballscrew rupture, which, along with corrosion on the ballscrew lower splines, may lead to loss of transmission of THSA torque loads from the ballscrew to the tie-bar and consequent THSA blowback, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by June 17, 2013.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0335; Directorate Identifier 2012–NM–187–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0210, dated October 11, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the

MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Since the issuance of EASA AD 2012–0061 which addresses the corrosion identified in service on THSA [part number] P/N 47147–500 and P/N 47147–700 at the level of the ballscrew lower splines, further analyses have been conducted to determine the need for any additional action.

The ballscrew lower splines are not loaded in normal operation, only in case of ballscrew rupture. Analysis results have shown that such rupture could happen during the current inspection interval imposed by the Maintenance Review Board Report (MRBR), task 274000–12.

Corrosion on the lower splines, in case of ballscrew rupture, may lead to loss of transmission of THSA torque loads from the ballscrew to the tie-bar and consequent THSA blowback, which could result in loss of control of the aeroplane.

For the reasons described above, this [EASA] AD requires reduction of the check interval of MRBR task 274000–12.

Required actions include repetitive THSA ballscrew shaft integrity tests. Corrective actions include replacement of the THSA. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Mandatory Service Bulletin A330–27–3191, dated June 7, 2012.
- Airbus Mandatory Service Bulletin A340–27–4186, dated June 7, 2012.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 30 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $17,850, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing up to $722,556, for a cost of up to $723,236 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2013–0335; Directorate Identifier 2012–NM–187–AD.

(a) Comments Due Date

We must receive comments by June 17, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers; if fitted with a trimmable horizontal stabilizer actuator (THSA) having part number (P/N) 47147–500 or P/N 47147–700.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that ballscrew rupture could occur on certain THSAs. We are issuing this AD to detect and correct ballscrew rupture, which, along with corrosion on the ballscrew lower splines, may lead to loss of transmission of THSA torque loads from the ballscrew to the tie-bar and consequent THSA blowback, which could result in loss of control 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) Repetitive Integrity Tests

At the later of the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, do a THSA ballscrew shaft integrity test, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3191, dated June 7, 2012; or Airbus Mandatory Service Bulletin A340–27–4186, dated June 7, 2012; as applicable. Repeat the integrity test thereafter at intervals not to exceed

12,000 flight hours or 4,400 flight cycles, whichever occurs first.

(1) At the latest of the times specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) Within 12,000 flight hours since the airplane's first flight; or

(ii) Within 12,000 flight hours since the most recent THSA ballscrew shaft integrity test was done as specified in maintenance review board report (MRBR) Task 274000–12; or

(iii) Within 12,000 flight hours since the most recent THSA ballscrew shaft integrity test was done, as specified in Airbus Mandatory Service Bulletin A330–27–3179 or Airbus Mandatory Service Bulletin A340–27–4175, as applicable. (These service bulletins specify testing in case of type II or type III findings).

(2) Within 1,000 flight hours after the effective date of this AD, but without exceeding the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD.

(i) 16,000 flight hours since the airplane's first flight.

(ii) 16,000 flight hours since the most recent THSA ballscrew shaft integrity test was done, as specified in MRBR task 274000–12.

(iii) 16,000 flight hours since the most recent THSA ballscrew shaft integrity test was done, as specified in Airbus Mandatory Service Bulletin A330–27–3179, or Airbus Mandatory Service Bulletin A340–27–4175, as applicable. (These service bulletins specify testing in case of type II or type III findings).

(h) Replacement

If the result from any test required by paragraph (g) of this AD is not correct, as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3191, dated June 7, 2012; or Airbus Mandatory Service Bulletin A340–27–4186, dated June 7, 2012; as applicable: Before further flight, replace the THSA with a serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3191, dated June 7, 2012; or Airbus Mandatory Service Bulletin A340–27–4186, dated June 7, 2012; as applicable. Replacement of a THSA, as required by this paragraph, with a THSA having P/N 47147–500 or P/N 47147–700, is not terminating action for the repetitive tests required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0210, dated October 11, 2012, and the service bulletins specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD, for related information.

(i) Airbus Mandatory Service Bulletin A330–27–3191, dated June 7, 2012.

(ii) Airbus Mandatory Service Bulletin A340–27–4186, dated June 7, 2012.

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10366 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0360; Directorate Identifier 2013–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A318, A319, A320, and A321 series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) to advise the flightcrew of emergency procedures for addressing angle of attack (AoA) sensor blockage. The existing AD also provides for optional terminating action for the AFM revision, which involves replacing AoA sensor conic plates with AoA sensor flat plates. Since we issued that AD, we have determined that the replacement of AoA sensor conic plates is necessary to address the identified unsafe condition. This proposed AD would mandate the installation of AoA sensor flat plates and removal of the AFM revision. We are proposing this AD to prevent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by June 17, 2013.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0360; Directorate Identifier 2013–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On December 27, 2012, we issued AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013). That AD required actions intended to address an unsafe condition on all Airbus Model A318, A319, A320, and A321 series airplanes.

Since we issued AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), we have determined that the replacement of the AoA sensor conic plates with flat plates is necessary to address the identified unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0022, dated February 1, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Recently, an Airbus A330 aeroplane equipped with Angle of Attack (AoA) sensors with conic plates installed, experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased.
>
> Based on the results of the subsequent analysis, it is suspected that these conic plates may have contributed to the event. Investigations are on-going to determine what caused the blockage of these AoA sensors.
>
> Blockage of two or three AoA sensors at the same angle may cause the Alpha Prot of the normal law to activate. Under normal flight conditions (in normal law), if the Alpha Prot activates and Mach number increases, the flight control laws order a pitch down of the aeroplane that the flight crew may be unable to counteract with a side stick deflection, even in the full backward position.
>
> This condition, if not corrected, could result in reduced control of the aeroplane.
>
> AoA conic plates of similar design are also installed on A320 family aeroplanes, and installation of these AoA sensor conic plates was required by EASA AD 2012–0236, making reference to Airbus Service Bulletin (SB) A320–34–1521 for in-service modification.
>
> That requirement was deleted by EASA AD 2012–0236R1.
>
> To address this potential unsafe condition on A320 family aeroplanes, Airbus developed an ''AOA Blocked'' emergency procedure, published as a temporary revision (TR) of the Airplane Flight Manual (AFM), to ensure that flight crews, in case of AoA sensors blockage, apply the applicable emergency procedure.
>
> Consequently, EASA issued Emergency AD 2012–0264–E [which corresponds to FAA AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013)] to require amendment of the AFM by incorporating the Airbus TR.
>
> Since that [EASA] AD was issued, Airbus published approved instructions to re-install AoA sensor flat plates on A320 family aeroplanes.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0264–E which is superseded, and requires installation of AoA sensor flat plates, after which the AFM operational procedure can be removed.

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

In AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), we determined that the AFM operational procedure specified in Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, mitigates risks associated with installation of conic plates. This proposed AD would require installation of flat plates to address the identified unsafe condition. After analysis of the safety benefit of the AFM operational procedure, we determined that the previously mandated AFM operational procedure must be removed after replacement of the conic plates with flat plates.

Paragraph (h) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), only specifies that Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, may be removed after accomplishing the modification (installation of flat plates). Therefore, we have revised paragraph (h) of this proposed AD to require that after the modification for an airplane has been done, Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, must be removed before further flight. For airplanes on which the modification has already been done, we have allowed a compliance time of ''within 5 days after the effective date of this AD'' for accomplishing the removal.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 100 products of U.S. registry.

The actions that are required by AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. We have received no definitive data that would enable us to provide part cost estimates. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the

proposed AD on U.S. operators to be $59,500, or $595 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), and adding the following new AD:

Airbus: Docket No. FAA–2013–0360; Directorate Identifier 2013–NM–033–AD.

(a) Comments Due Date

We must receive comments by June 17, 2013.

(b) Affected ADs

This AD supersedes AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013).

(c) Applicability

This AD applies to the Airbus airplanes listed in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that replacement of angle of attack (AoA) sensor conic plates is necessary to address the identified unsafe condition. We are issuing this AD to prevent reduced control of the airplane.

(f) Compliance

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

(g) Retained Airplane Flight Manual Revision With New Exception

This paragraph restates the requirements of paragraph (g) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), with a new exception. Except as specified in paragraph (k) of this AD, for airplanes on which an AoA sensor conic plate is installed in production by Airbus modification 153213 or 153214, or in-service as specified in Airbus Mandatory Service Bulletin A320–34–1521, dated May 7, 2012; or Revision 01, dated September 12, 2012: Within 5 days after January 24, 2013 (the effective date of AD 2012–26–51), revise the Emergency Procedures of the Airbus A318/A319/A320/A321 Airplane Flight Manual (AFM) by inserting Airbus A318/A319/A320/A321 Temporary Revision (TR) TR286, Issue 1.0, dated December 17, 2012, to advise the flightcrew of emergency procedures for addressing AoA sensor blockage. When the information in Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, and the TR may be removed. Accomplishment of the new flat plate installation required by paragraph (j) of this AD terminates the actions required by this paragraph; and after the installation of new flat plates has been done, Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM before further flight.

(h) Retained Optional Terminating Action With Revised TR Removal Requirement

This paragraph restates the requirements of paragraph (h) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), with a revised TR removal requirement. Modification of an airplane by replacing AoA sensor conic plates with AoA sensor flat plates, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, constitutes terminating action for the AFM revision required by paragraph (g) of this AD; and after the modification has been done, Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM before further flight, except for airplanes on which the modification has been done before the effective date of this AD. For airplanes on which the modification has been done before the effective date of this AD, Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM within 5 days after the effective date of this AD. Accomplishment of the actions required by paragraphs (j) and (l) of this AD terminate the actions specified in this paragraph.

(i) Retained Parts Installation Prohibition

This paragraph restates the requirements of paragraph (i) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013). As of January 24, 2013 (the effective date of AD 2012–26–51), no person may install an AoA sensor conic plate in service using Airbus Mandatory Service Bulletin A320–34–1521, dated May 7, 2012; or Revision 01, dated September 12, 2012; on any airplane.

(j) New Flat Plate Installation

Within 5 months after the effective date of this AD, remove all AoA sensor conic plates having part number (P/N) F3411060200000 or P/N F3411060900000 and install AoA sensor flat plates having part numbers specified in paragraph (j)(1) or (j)(2) of this AD, except as specified in paragraph (k) of this AD. Install the AoA sensor plates in accordance with the applicable method specified in paragraph (j)(1) or (j)(2) of this AD. Accomplishment of the AoA sensor flat plate installation terminates the AFM revision required by paragraph (g) of this AD; and after accomplishing the installation, the

actions specified in paragraph (l) of this AD must be done.

(1) Install P/N D3411013520200 in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013.

(2) Install P/N D3411007620000 or P/N D3411013520000, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(k) New Exception to Paragraphs (g) and (j) of This AD

An airplane on which Airbus modification 154863 (installation of AOA sensor flat plate) and modification 154864 (coating protection) have been embodied in production is not affected by the requirements of paragraph (g) or (j) of this AD, provided that, since first flight, no AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000 has been installed on that airplane.

(l) New Removal of AFM Revision

After modification of an airplane as required by paragraph (j) of this AD, Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, that was inserted into the Airbus A318/A319/A320/A321 AFM as required by paragraph (g) of this AD is no longer required and must be removed from the AFM of that airplane before further flight.

(m) New Parts Installation Prohibition

(1) As of the effective date of this AD, for any airplane that has AoA sensor flat plates installed: As of the effective date of this AD, do not install any AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000, and do not use any AoA protection cover having P/N 98D34203003000.

(2) For any airplane that has AoA sensor conic plates installed: As of the effective date of this AD, after modification of the airplane as required by paragraph (j) of this AD, do not install any AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000, and do not use any AoA protection cover having P/N 98D34203003000.

(n) Special Flight Permits

Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, has been inserted into the Emergency Procedures of the Airbus A318/A319/A320/A321 AFM.

(o) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0022, dated February 1, 2013; Airbus Mandatory Service Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013; and Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 8308]

RIN 1400–AC60

Exchange Visitor Program—Teachers

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department is amending existing regulations governing the teacher category of the Exchange Visitor Program. The proposed amendments clarify the duration of program participation; amend eligibility requirements with respect to verifying English proficiency; and reduce the required teaching or related experience from three years to the equivalent of two years full-time teaching experience; introduce a required cultural component; and propose the implementation of a two-year bar for repeat participation to foster the purpose of the Mutual Educational and Cultural Exchange Act of 1961, (''Fulbright-Hays Act''). These proposed changes will enhance the integrity and programmatic effectiveness of the teacher category.

DATES: The Department will accept comments on the proposed regulation from the public up to July 1, 2013.

ADDRESSES: You may submit comments identified by any of the following methods:

- Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm* and searching for the RIN (1400–AC60)
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Private Sector Exchange, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505.
- *Email: JExchanges@state.gov.* You must include the RIN (1400–AC60) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505; telephone: (202) 632–2805; fax (202) 632–2701.

SUMMARY: *Statement of Need.* In recent years, the teacher exchange program has been used by some sponsors in a manner that falls outside the original intent of the program. Occasionally, it has been used to fill a labor need in U.S. public and private schools rather than to further a cultural exchange. The Department has identified issues regarding job placements, wages and hours, and is of the opinion that the program lacks a cultural component necessary for the program to be consistent with the Mutual Educational and Cultural Exchange Act of 1961, as amended. In addition, the substance of this rule has been informed by analysis

and implementation of exchange teacher programs, including pilot programs. As a result, the Department is proposing to modify the current teacher regulations set forth at 22 CFR 62.24. The Department seeks to: (i) Reform the teacher exchange program; (ii) ensure that the program better protects the health, safety, and welfare of program participants; and (iii) fortify the program's prestige as a world class U.S. public diplomacy initiative.

Statement of Legal Authority. The Exchange Visitor Program (of which the teacher category is one of 15 categories of program types) is authorized by the Mutual Educational and Cultural Exchange Act of 1961 (*Pub. L.* 87–256, 75 *Stat.* 527) (Fulbright-Hays Act or Act) and implemented through 22 CFR 62.24. Enacted by the 87th Congress on September 21, 1961, the Act's stated purpose is ''to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world. . . .'' In the half century since the Act's passage, millions of foreign participants, Americans, and friends and families of the participants have benefitted from the mutual understanding and peaceful relations that can be derived from such person-to-person contact. The teacher exchange program embodies and carries forward the stated purpose and intent of the Act.

Reasons for this Notice of Proposed Rulemaking (NPRM). The NPRM makes several changes, including adding the following requirements:

1. Sponsors must require each exchange teacher to complete a cultural activity component annually through which the exchange teachers can share aspects of their own cultural heritage with their U.S. communities. Moreover, sponsors must ensure that exchange teachers to incorporate cultural heritage lessons or elements into their curriculum, and that they do so. This cultural component is seen as a valuable tool to involve exchange teachers in the communities where they live and teach, to inform their communities about their cultures, and to help U.S. students develop global awareness and an interest in other countries;

2. Teacher applicants must, at a minimum, have a university or college degree in either education or the subject matter they intend to teach;

3. The eligibility requirement for teachers is being changed from ''minimum of 3 years of teaching or related professional experience'' to ''two years of full-time teaching experience, post degree.'';

4. Sponsors must verify a teacher applicant's English language proficiency through recognized language tests or in-person interviews, videoconferencing, or telephone interviews;

5. Job placements in the U.S. must be full-time positions located in accredited primary or secondary (K–12) public or private academic institutions in the United States, which excludes pre-kindergarten or daycare institutions;

6. The Department will increase the transparency of the total cost and fees to the program participants; and

7. A repeat participation clause has been added.

SUPPLEMENTARY INFORMATION:

Educational and cultural exchanges are the cornerstone of U.S. public diplomacy and an integral component of U.S. foreign policy. The purpose of the teacher category of the Exchange Visitor Program is to promote the interchange of American and foreign teachers in public and private schools; to enhance mutual understanding between the people of the United States and people of other countries; to strengthen international education programs in U.S. schools through the delivery of an international perspective to students; to provide U.S. teachers with an opportunity to expand their international understanding by working alongside foreign colleagues; and to provide opportunities for the development of lasting links between U.S. and foreign schools. These regulations govern exchange visitors who teach full-time in primary and secondary (K–12) accredited public or private academic institutions in the United States. Program participants sharpen their professional skills and foster meaningful relationships through their participation in activities with Americans in schools and communities, and they return home ultimately to share their experiences and increased knowledge of the United States and the U.S. educational system. Such exchanges enable visitors to have a heightened understanding of U.S. culture, society, and teaching practices at the primary and secondary levels, and allow U.S. students who lack opportunities to travel abroad to have early, meaningful relationships with individuals from other cultures.

It is equally important that the public and private schools that host foreign exchange teachers have the responsibility and intent to create a holistic cultural program and contemplate the overall experience that these teachers will take back to their home countries. The Department supports the use of exchange visitor teachers to help students understand other cultures and comprehend global issues and to promote the study of foreign languages and culture. Native speakers add a vital dimension to foreign language instruction. Speaking another's language promotes understanding, conveys respect, and strengthens the ability to engage foreign peoples and governments. In recent years, the Department has been strengthening the rules throughout the Exchange Visitor Program (22 CFR Part 62) to ensure that this program is consistent with the purpose of Section 109 of the Fulbright-Hays Act, and that this program is not being used for other purposes. On occasion, some sponsors have used the J–1 teacher exchange program to address teacher shortages by filling permanent teaching positions with exchange teachers, who later convert to H–1B visa workers for an extended period of employment. This contravenes the underlying purpose of the Mutual Educational and Cultural Exchange Act, which is ''to increase mutual understanding between the people of the United States and the people of other countries . . . and the contributions being made toward a peaceful and more fruitful life for people throughout the world . . . ''

Consistent with this stated purpose, the teacher exchange program is not to be used to recruit and train foreign teachers for permanent employment in the United States. The teacher category regulations are being amended to clarify that the exchange teacher's participation at a primary or secondary accredited academic institution must be temporary while in the United States on a J–1 visa and that J–1 program participants are expected to return to their home countries following completion of their exchange programs. The Department proposes that sponsors be required to ensure that J–1 teachers are only placed in primary or secondary academic schools that are duly recognized and declared as accredited academic institutions by the appropriate authority of the state in which they are located. The definition of an accredited academic institution is not currently in Section 62.2; however, the Department has proposed a definition of this term in a previous NPRM (see 74 FR 48177, RIN 1400–AC36). The proposed definition of an accredited academic institution is,

''any publicly or privately operated primary, secondary, or post-secondary institution in the United States that offers primarily academic programs and is duly accredited by the appropriate academic accrediting authority of the jurisdiction in which such institution is located. An institution that offers primarily vocational or technical programs does not fall within the purview of an academic institution for this purpose.''

Sponsors must ensure that an exchange teacher's appointment to a position at a primary or secondary accredited academic institution is temporary, even if the teaching position is permanent.

In addition, a foreign national may be admitted to the United States as a J–1 nonimmigrant in the teacher category only for the purpose of full-time teaching as a teacher of record, not as a teacher's assistant/aide, substitute teacher, or other non-instructional position at a primary or secondary accredited academic institution. A full-time teaching position is defined to be employment for a minimum of 32 hours per week.

Transparency of Fees

Various program fees charged to participants by foreign agents, sponsors and U.S. host schools remain a key vulnerability in the Exchange Visitor Program. This vulnerability is propagated by work-related deductions (i.e., meals, housing costs, school materials) taken out of a participant's wages. In many cases, after these deductions, participants' take-home pay is an insufficient amount of money to live on in the United States or to defray the cost associated with their exchange program.

The Department believes that requiring sponsors to provide participants with a comprehensive breakdown of total Program fees (including visa fee, the Student and Exchange Visitor Information System (SEVIS) fee, insurance costs, estimates for housing and transportation costs, foreign agent/partner fee, sponsor fee, expected work-related deductions, and estimates of all other fees) charged for participation in a teacher exchange program would greatly enhance transparency and better ensure that participants fully understand the financial obligation they assume when choosing to participate in an exchange program.

The Department accordingly suggests that sponsors and foreign agents post on their Web sites and make known during the teacher application process a comprehensive breakdown of those total program fees listed above. This requirement would allow all parties involved or interested in the Exchange Visitor Program to understand when sponsor and foreign agents add extra fees or charge excessive rates. The Department seeks comment on whether these proposed requirements would make program fees transparent and better ensure that exchange teachers understand the cost of an exchange program.

Cultural Activity Component

To fulfill the cultural goals of the Exchange Visitor Program, this rule also proposes to add a mandatory annual cultural component through which the exchange teachers can share aspects of their cultural heritage with their American communities, set forth at § 62.24(g). This cultural component is a valuable tool to involve exchange teachers in the communities where they live and teach, to inform their communities about their cultures, and to help students develop global awareness and interest in learning more about or visiting other countries. The Department proposes that the sponsor, host school and exchange teacher work together to develop a creative cultural component. One example of this component could be to have exchange teachers make annual presentations in public settings (e.g., schools, museums, civic organizations, businesses associations) where there is direct interaction with the school or larger communities and in which they could share aspects of their home countries (e.g., history, traditions, heritage, music, dance, art, economy, educational system). In addition, the Department is proposing that exchange teachers foster cross-cultural learning experiences for students by maintaining, and involving U.S. students in, a virtual exchange component to complement the in-person exchange. The objective for the virtual exchange component, defined as technology-enabled, sustained, people-to-people cross-cultural education programs, is to supplement the goals of the in-person exchange and to integrate global knowledge, cultural awareness and/or foreign language into the classroom. Exchange teachers may develop dialogues or other virtual activities with schools or students in their home countries. The Department expects that the use of virtual means may not be possible in every situation and in those instances, would accept dialogue facilitated through other means.

Exchange teachers will be required to submit an annual report to their program sponsors detailing this component of their exchange visitor programs. The report does not have to be in a specific format, but must contain specific fields of information as identified in these regulations (i.e., date or dates, teacher name, program sponsor name, location, topic, number of individuals in attendance, and a general overview of the project and its impact). Sponsors must retain the reports as part of each participant's documentation for a period of three years following the completion of the teacher's exchange program, as required by the Exchange Visitor Program regulations (22 CFR 62.10). The Department encourages sponsors to share examples of such cultural activities with the Department as best practices and positive program models.

Teacher Eligibility

Current regulations state that foreign teachers are expected to have ''a minimum of three years of teaching or related professional experience.'' It is critical to the success of this exchange program that foreign teachers have the necessary skills and teaching experience to benefit from exchange opportunities and to achieve the intended goals of this professional exchange program. Exchange teachers must be able to make an immediate impact in the classroom and share some of their teaching methods with American teachers while developing or enhancing their own professional skills. While new teachers or recent college graduates may have a strong interest in the cultural opportunities offered through the Exchange Visitor Program, they do not have the essential teaching experience (including experience in classroom control, student discipline, or parental involvement) to meet the goals of the Exchange Visitor Program. Therefore, this rule proposes that exchange teachers have the equivalent of a U.S. Bachelor's degree in either education or in the subject matter (or related subjects) they intend to teach; the equivalent of two years of post-degree full-time teaching experience; and be employed as a teacher at the time of application for the program. Further, the Department proposes to reduce the number of years of teaching experience necessary to qualify for program participation from three to two years. The Department received comments in the past from several larger teacher sponsors regarding this reduction and believes that two years of teaching experience is sufficient combined with the U.S. Bachelor's degree or equivalent requirement. Specific comments on this proposal are requested.

The Department is of the opinion that all reasonable measures should be taken to ensure the safety of students placed in the classroom of exchange teachers. U.S. teachers are required to have undergone a criminal background check before being hired, and many state-level Departments of Education and local schools and school districts require the same screening for exchange teachers being placed in a U.S. classroom. Sponsors must be aware and comply with all state-level Departments of Education and local school or school district requirements regarding security and criminal background checks. The security checks are often completed in separate phases, such as prior to program acceptance and visa issuance, and upon arrival in the United States and before the beginning of their exchange program.

English Language Screening

The proposed rule retains the long-standing practice that sponsors may develop their own business practice to interview potential participants and document such interviews in order to ensure that selected applicants have sufficient English language skills to travel in the United States and function successfully in their work environments. To make this determination, the Department proposes that sponsors may either (i) obtain English language test scores from recognized language skills tests administered by academic institutions or English language schools, or (ii) evaluate applicants' language skills during documented sponsor interviews. The proposed rule affords a third option for additional flexibility for meeting this requirement by allowing sponsors the option to video-conference applicant interviews, rather than conducting them only in person. The final option consists of conducting an interview by telephone if an in-person or videoconferencing interview is not a viable option. Although foreign entities may assist sponsors in this recruiting function, sponsors are responsible for the final selection of their program participants. Sponsors shall document proof of English proficiency in each teacher's file and provide such proof of English proficiency to the Department upon request during site visits or investigations of complaints.

Program Dates

The proposed rule includes a new requirement set forth at § 62.24(e)(2) that program dates should coincide with the academic year cycle (July 1–June 30) to ensure a smooth transition as exchange teachers arrive and depart, unless specifically requested in writing and permitted by the school. This provision will result in less disruption to the schools. A school may submit a written waiver of this requirement to the sponsor if a teacher is requested and the program will be sufficiently supported outside the normal beginning dates of an academic year.

Program Extensions

The Department recognizes that in some circumstances program extensions beyond the maximum duration may be necessary when a participant is unable to complete the exchange due to extenuating circumstances (i.e., accident, medical reasons). However, such extension requests should be rare as sponsors of teacher exchange programs are expected to develop an exchange visitor program that can be completed within three years. Justifications such as wishing not to interrupt an ongoing program or heavy reliance on a specific exchange teacher are not reconcilable with the Department's requirement that the maximum period of program duration for a teacher should not exceed three years.

Teacher Compensation

The proposed regulations also clarify that exchange teachers are to be paid (or compensated) directly by the schools or school districts in which they are placed, unless they are supported by foreign government funding or through continued support from their home schools. Participants must be under the direct supervision and guidance of schools, and are not employees of sponsor organizations. SEVIS records should exactly reflect the funding situation for each participant. Teaching positions, including duties/responsibilities and hours of employment, must be consistent with similarly situated teachers in the district or school where an exchange teacher is assigned to teach.

Repeat Participation

Since 1949, a three-year period of program duration has been afforded to teacher participants. To date, the Department has been unable to identify a compelling public diplomacy reason to abandon the long-standing three-year limitation governing the teacher program. The regulations have been amended, however, to permit exchange teachers who have successfully completed their teacher exchange programs to participate again as exchange teachers in the Exchange Visitor Program. To be eligible to repeat the program, exchange teachers must have resided outside the United States for at least two years following completion of their programs and must continue to meet all other eligibility and regulatory requirements for this category. This amendment set forth at § 62.24(j) is proposed to ensure that the reciprocal exchange objectives underlying the Exchange Visitor Program are met and that the Program is not misused for long-term employment purposes.

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government policy and longstanding practice has been for the Department of State to oversee foreign nationals who come to the United States as participants in exchange visitor programs, either directly or through private sector program sponsors or grantee organizations. When problems occur, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems. The purpose of this rule is to protect the health, safety, and welfare of foreign nationals entering the United States (often on programs funded by the U.S. Government) for a finite period of time and with a view that they will return to their countries of nationality upon completion of their programs. The Department of State is of the opinion that the failure to protect the health, safety, and welfare of these foreign nationals will have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department nevertheless is publishing this rule as a proposed rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808).

This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this proposed rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above in the APA discussion, the Department is of the opinion that this proposed rule is exempt from the provisions of 5 U.S.C. 553, and no other law requires the Department of State to give notice of a proposed rulemaking. Accordingly, the Department is of the opinion that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, § 3(b). However, to better inform the public as to the costs and burdens of this rule, the Department notes that the proposed rule will affect the operations of 59 sponsors designated by the Department to conduct Teacher Programs. Approximately 1,200 new teachers begin exchange programs annually, and as the program allows a duration of up to three years, there are approximately 2,500 active teachers in the United States annually.

Numbers of Small Businesses

Of the 59 currently designated Teacher Program sponsors, 19 are corporate, academic, and tax-exempt program sponsors with annual revenues of less than $7 million. These 19 small program sponsors accounted for 569, or approximately 23%, of the active 2,500 Teacher Program participants in 2012.

Teacher Selection

The proposed rule expands sponsor screening requirements to include verification of each potential exchange teacher's English proficiency and verification of a U.S. Bachelor's degree equivalent in education or in the subject he or she will teach as a participant. The Department estimates these additional requirements annually will cost $24,000 (one burden hour at $20 for each of the1,200 new participants annually).

Teaching Position

The proposed rule more precisely defines exchange teacher positions by requiring sponsors to ensure that potential exchange teachers have accepted written offers of full-time teaching positions; program dates coincide with the academic year cycle; exchange teachers are in compliance with any applicable collective bargaining agreement; exchange teachers are appointed in temporary positions at primary or secondary accredited academic institutions; and exchange teachers' duties/responsibilities and hours of employment are consistent with similarly situated teachers in an exchange teacher's district or school. The Department estimates the cost of the additional administrative burden caused by the new requirements to be $5,690 (0.5 burden hours at $20 for each of the 569 participants) annually.

Program Disclosure

The proposed rule requires sponsors to provide exchange teachers with the following information before their program begins: the length of program participation; the name and location of the school where the exchange teacher will be placed; a brief description of the school; residential accommodation arrangements (including cost implications); transportation arrangements to and from the exchange teacher's residence and school (including cost implications); licensing procedures; terms and conditions of compensation (including deductions for tax, health insurance, etc. from the gross salary); any provisions affecting the ability of the exchange teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); a summary of the significant components of the program (including a statement of the teaching requirements and related professional obligations, including the required cultural activity and cultural heritage curriculum components); transparency in fees; and a written statement that clearly identifies the compensation, if any, to be paid to each exchange teacher and any other financial arrangements concerning the exchange visitor program. The Department estimates these additional requirements will cost $11,380 (1 burden hour at $20 for each of the 569 participants) annually.

Cultural Activity Component

The proposed rule requires sponsors to collect teachers' annual reports detailing their cultural activity component. The Department estimates that the collection of these reports will annually cost $2,845.00 (0.5 burden hours at $10 for each of the 569 teachers).

Collectively, the proposed rule will impose new costs of no more than $43,915 in total to the 19 small program sponsors. The additional burden cost of this proposed rule per exchange teacher is approximately $70. The 19 small businesses vary in the number of exchange teachers they sponsor annually. Ten of the 19 small businesses bring in no more than the five required participants annually, which means a new burden of $350. Three small businesses bring in approximately 30 teachers annually, one small business sponsored 75 exchange teachers in 2012, one sponsored 150 and one sponsored 200 exchange teachers. For the small business that recruited the most teachers (200 teachers) in 2012, the cost of this proposed rule will be $14,000. The Department therefore does not believe that these regulatory changes will have a significant economic impact on a substantial number of small entities.

Executive Order 12866 and 13563

The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866 and 13563. The Department has nevertheless reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders.

The teacher exchange program regulations have not been amended since March 19, 1993. Although the teacher exchange program is a fairly small program of approximately 1,200 new teachers annually, the Department is aware of the impact these exchange teachers have on local schools and school districts. First, to ensure that both the exchange teachers and the Americans with whom they work and teach are receiving the full benefit of

this program, the Department proposes to increase the screening and vetting of potential exchange teachers. Specifically, a sponsor (or sponsor representative) must conduct an interview in-person or by videoconferencing during the application process to ensure sufficient English proficiency. In the case where either in-person or videoconferencing is not an option, telephone interviews may be used. The Department identifies the potential costs associated with the additional screening requirements as minimal. Screening applicants and ensuring English proficiency is a current business practice of sponsors.

The proposed rule also includes a requirement for sponsors to provide full transparency on all fees associated with teacher exchanges. The Department believes that requiring sponsors to provide participants with a comprehensive breakdown of total program fees (including visa fee, SEVIS fee, estimates for food, housing and transportation costs, foreign agent/partner fee, sponsor fee, expected work-related deductions, and estimates of all other fees) would greatly enhance transparency and better ensure that participants fully understand the financial obligation they assume when choosing to participate in the Exchange Visitor Program. The Department accordingly believes that sponsors and foreign agents should post on their Web sites or through recruiting measures a comprehensive breakdown of those total program fees listed above. The Department believes that sponsors already prepare the comprehensive breakdown information as a business practice. The cost of this requirement will come from adding a summary to the existing sponsor application and orientation materials and is estimated at an additional $1.00 per exchange teacher for a total of $1,200.00 annually.

Finally, to ensure that this program remains an educational and cultural exchange program, the Department proposes the submission of an annual cultural activity to be reported by all exchange teachers to their sponsors. The average cost of these reports per exchange teacher is estimated at $50.00 per person. These costs would derive from travel expenses and materials required for presentations and reporting requirements. The Department recognizes that the sponsor may need additional resources or staff to review and store the reports. The Department estimates that the collection of these reports will annually cost $12,500.00 (0.5 burden hours at $10 for 2500 teachers).

Teacher exchange programs conducted under the authorities of the Exchange Visitor Program promote mutual understanding by providing foreign teachers the opportunity to teach in American schools and participate in daily educational curricula in the United States. Teacher program participants gain an understanding of and an appreciation for the similarities and differences between their culture and that of the United States. Upon their return home, these teachers enrich their schools and communities with their fresh perspectives of U.S. culture and events. Teacher exchanges also foster enduring relationships and lifelong friendships that help build longstanding ties between the people of the United States and other countries. In reciprocal fashion, American school teachers and students are provided opportunities to increase their knowledge and understanding of the world through these friendships. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this proposed rule.

Executive Order 12988

The Department of State has reviewed this proposed rule in light of §§ 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

Acknowledging that the administration of schools is primarily a state function, the Department finds that this proposed rule will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995). This proposed rule requires new collection of information by sponsors and is covered under the PRA. The Department has submitted an information collection request to OMB for review and approval under the PRA.

The information collection requirements contained in this proposed rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405–0147, Form DS–7000, which requires collection of additional information for the Exchange Visitor Program. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with modifying the collection of information in three areas. Additional collections are being proposed under the teacher selection, teaching position, program disclosure and cultural activity component sections.

First, sponsors would be required to provide additional information for the teacher, including information on the length of program participation; the name and location of the school where the teacher will be placed; a description of the school; residential accommodation arrangements; transportation options from the teacher's residence to his or her site of activity (the school) and return; licensing procedures; terms and conditions of compensation; and a summary of the significant components of the program, as set forth in proposed Section 62.24(f). Also, sponsors would be required to collect each year a report on the cultural activity component of the teacher's program, as set forth in proposed Section 62.24(g).

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Recording, Reporting, and Data Collection Requirements under 22 CFR Part 62.

(3) Agency form number: DS–7000.

(4) Affected public: This is an expansion and continuation of an existing information collection utilized by the Bureau of Educational and Cultural Affairs in its administration and program oversight of the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The Department seeks public comment, including comments from teacher exchange program sponsors and other persons directly involved in the administration of teacher exchanges.

(5) Change to information collected by the Department of State: The

Department is proposing changes to both reporting and recordkeeping requirements. In addition to current collections, the Department proposes that sponsors will now be required to provide the following to exchange teachers in advance of their arrival in the United States:

1. the name of the specific school where the teacher will be placed;
2. a brief description of the school;
3. residential accommodation arrangements (including cost implications);
4. transportation arrangements to and from the exchange teacher's residence and school (including cost implications);
5. fees associated with the teacher exchange program;
6. licensing procedures;
7. terms and conditions of compensation (including deductions for taxes, health insurance, etc. from the gross salary);
8. any provisions affecting the ability of the teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); and
9. a summary of the required cultural activity component.

The Department proposes that program participants will now be required to provide the following documents to the sponsors:

1. cultural requirement annual report;
2. proof of educational requirements; and
3. proof of English proficiency.

Recordkeeping: Sponsors will now be required to retain additional records as a result of these changes. The additional recordkeeping requirements are the results of the cultural component requirement annual reports. The school information, teaching position, and compensation are already collected. Additional information collection or retention burdens are discussed below.

(6) You may submit comments by any of the following methods:

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

Email: JExchanges@State.gov.

Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, ECA/EC/D, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, ATTN: **Federal Register** Notice Response.

You must include the DS form number (DS–7000), information collection title, and OMB control number (1405–0147) in any correspondence.

(7) The Department seeks public comment on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- The accuracy of the Department's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How 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 submission of responses.

(8) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total number of respondents for the teacher selection, teacher position and program disclosure sections remains at an estimated 59 organizations designated by the Department to conduct teacher exchange program activities. The number of respondents for the annual cultural activity component reporting requirement is estimated to be 2,500 active exchange teachers annually. The recordkeeping burden on the 59 sponsors as a result of retaining the annual cultural activity reports is estimated to be $12,500.00 (0.5 burden hours at $10 for 2500 active teachers). However, it is estimated that the burden on the 2500 active teachers to complete the cultural activity component will be approximately two hours. Of those 2,500 active teachers, 1,200 teachers who are in their first year of the program will be required to provide English language test scores as part of the teacher selection process.

(9) *An estimate of the total annual public burden (in hours) associated with the collection:* The additional burden hours for the additional teacher selection requirements for the 59 program sponsors will be approximately 1.5 hours for each of the 1,200 new teacher applicants annually, for a total additional burden of 1,800 hours (1,200 responses × 1.5 burden hours). The Department calculates that the new annual reporting requirements for the cultural component may require up to two additional hours of work for each exchange teacher to complete the activity and a half hour per placement for the 59 program sponsors. The Department estimates that for 2,500 active exchange teachers, the burden hours will total 5,000 hours (2,500 responses × 2 hours) annually and 1,200 hours for all sponsors (2,500 responses × 0.5 hours). Under the current collection, program disclosures are already estimated at 0.5 burden hours. The Department is increasing the estimated burden by .5 hour for an estimated total 1,200 burden hours (1,200 responses × 1.0 burden hour).

List of Subjects in 22 CFR Part 62

Cultural exchange programs, reporting and recordkeeping requirements.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for Part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. § 1431 et seq.; 22 U.S.C. 2451 et seq. (Fulbright-Hays Act); Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, § 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.24 is revised to read as follows:

§ 62.24 Teachers

(a) *Purpose.* These regulations govern exchange visitors who teach full-time in primary and secondary (K–12) accredited, public or private academic institutions in the United States. Programs in this category promote the interchange of American and foreign teachers and enhance the mutual understanding between people of the United States and other countries. Program participants sharpen their professional skills and participate in cross-cultural activities with Americans in schools and communities, and they return home ultimately to share their experiences and increased knowledge of the United States and the U.S. educational system. Such exchanges enable exchange teachers to better understand American culture, society, and teaching practices at the primary and secondary levels and enhance Americans' knowledge of foreign cultures, customs, and teaching approaches.

(b) *Designation.* The Department of State may, in its discretion, designate *bona fide* programs satisfying the objectives in paragraph (a) of this section as exchange visitor programs in the teacher category.

(c) *Visitor eligibility.* Foreign nationals are eligible to participate in exchange visitor programs as full-time teachers if, at the time of application to the sponsor, the individual demonstrates to the satisfaction of the sponsor that they:

(1) Meet the qualifications for teaching in primary or secondary schools in their country of nationality or last legal permanent residence, and are working as teachers at the time of application;

(2) At a minimum have a degree equivalent to a U.S. Bachelor's degree in either education or the subject matter they intend to teach;

(3) Have, at a minimum, the equivalent of two years of full-time teaching experience, post-degree;

(4) Satisfy the teaching eligibility standards of the U.S. state in which they will teach;

(5) Are of good reputation and character; and

(6) Agree to come to the United States temporarily for the purpose of full-time teaching as the teacher of record in a primary or secondary (K–12) accredited public or private academic institution in the United States.

(d) *Teacher selection.* Sponsors must adequately screen foreign teachers prior to acceptance in the program. In addition to the requirements of § 62.10(a) and all security checks required by State Departments of Education and host schools, sponsor screening must include:

(1) Evaluating the qualifications of the foreign teachers to determine whether they satisfy the criteria set forth in paragraph (c) of this section;

(2) Securing references from one colleague and one current or former employer of the foreign teachers, attesting to the teachers' good reputations, character, and teaching skills; and

(3) Ensuring that foreign teachers possess sufficient proficiency in the English language to function in American classrooms on a day-to-day basis. Sponsors must verify applicants' English language proficiency through one of the following:

(i) A recognized English language test;

(ii) Signed documentation from academic institutions or English language schools;

(iii) Documented interviews conducted by the sponsors in-person or through videoconferencing; or

(iv) A telephone interview if an in-person interview or videoconferencing is not a viable option.

(e) *Teaching position.* Sponsors must ensure:

(1) Forms DS–2019 are not issued until potential exchange teachers have received and accepted written offers of full-time teaching positions of not less than 32 hours per week from the primary or secondary (K–12) accredited academic institutions in which they will teach;

(2) Program dates coincide with the academic year cycle to ensure a smooth transition as exchange teachers arrive and depart, unless otherwise requested in writing by the school;

(3) Exchange teachers are in compliance with any applicable collective bargaining agreement where one exists;

(4) Exchange teacher appointments to positions at primary or secondary accredited academic institutions must be temporary, even if the teaching positions are permanent, and may not lead to tenure; and

(5) Teaching positions, including duties/responsibilities and hours of employment, must be consistent and commensurate with the pay and benefits with similarly situated teachers in the district or school where an exchange teacher is assigned to teach.

(f) *Program disclosure.* Before programs begin and prior to finalization of any contracts, sponsors must provide each exchange teacher, in addition to the requirements set forth in § 62.10(b), with the following information in writing:

(1) The length of program participation; the name and location of the school where the teacher will be placed; a brief description of the school; any residential accommodation arrangements (including cost implications); transportation arrangements to and from the exchange teacher's residence and school (including cost implications); licensing procedures; terms and conditions of compensation (including deductions for tax, health insurance, etc. from the gross salary); any provisions affecting the ability of the teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); and a summary of the significant components of the program (including a statement of the teaching requirements and related professional obligations, including the required cultural activity component, as set forth in paragraph (g) of this section);

(2) A written statement that clearly identifies the compensation to be paid to each exchange teacher and any other financial arrangements concerning the Exchange Visitor Program. Teacher salaries, unless provided directly to the participants through government funding or through continued support from their home school, must come directly from the schools or school districts in which the teachers are placed; and

(3) A full listing of all fees associated with the exchange program (i.e., sponsor and third party fees, insurance, housing, transportation, visa fees)

(g) *Cultural activity component.* (1) Sponsors must require and should assist exchange teachers to:

(i) Complete a cultural activity component each academic year of program participation (e.g., making a presentation in a public setting where there is direct interaction with the school community or the American public, designed to give an overview of the history, traditions, heritage, music, dance, art, economy, educational system and/or other attributes of their home country); and

(ii) Maintain and involve U.S. students in dialogue or other activities with schools or students in another country through virtual exchange or other means, in order to supplement the goals of the in-person exchange and to integrate global knowledge, cultural awareness and/or foreign language into the classroom.

(2) Sponsors must require exchange teachers to submit annual reports detailing the cultural activity components of their exchange programs. The reports do not have to be in a specific format, but must contain the following information:

(i) Date(s) of the activity;

(ii) Teacher's full name;

(iii) Program sponsor's name; and

(iv) Location, attendance, topic, impact and general overview of the activity.

(h) *Location of the exchange.* Exchange teachers must participate in exchange visitor programs at the primary or secondary accredited academic institution(s) listed on their Forms DS–2019 or at location(s) where the institutions are involved in official school activities (e.g., school field trips, teacher development programs).

(i) *Duration of participation.* Exchange teachers may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which may not exceed three years.

(j) *Repeat participation.* Foreign nationals who have successfully completed teacher exchange programs are eligible to participate in additional teacher exchange programs, provided

that they have resided outside the United States for at least two years following the completion of their most recent teacher exchange program, and provided they continue to meet the eligibility requirements set forth in paragraph (c) of this section.

Dated: April 26, 2013.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–10400 Filed 5–1–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG–2013–0027]

Inland Waterways Navigation Regulations; Correction

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of April 26, 2013 (78 FR 24697). The document contained an incorrect RIN number. The corrected RIN number is RIN 1625–AC04.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of proposed rulemaking, contact Ms. Oneida Cuevas, U.S. Coast Guard, Department of Homeland Security, telephone (202) 372–3848, *Oneida.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION: The heading of the notice of proposed rulemaking published in the **Federal Register** of April 26, 2013, in FR Doc. 2013–09853, on page 24697, contained an incorrect RIN Number, ''1625–AB84.'' The correct RIN Number is ''1625–AC04.'' To advise the public of this error, we are publishing this notice of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking Inland Waterways Navigation Regulations published in the **Federal Register** of April 26, 2013, in FR Doc. 2013–09853, is corrected as follows: On page 24697, in the heading, ''RIN 1625–AB84'' is corrected to read ''RIN 1625–AC04.''

Dated: April 26, 2013.

Michael Cavallaro,

Commander, U.S. Coast Guard, Acting Chief, Office of Regulations and Administrative Law.

[FR Doc. 2013–10364 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Balloting Materials Postage

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 703.8.0 to require all ballot types to indicate that the proper amount of postage must be paid and to require balloting materials indicate the amount of postage for the return of ballots, unless mailed under the special exemption for military or overseas voting or returned under Business Reply Mail® service.

DATES: We must receive your comments on or before June 3, 2013.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday. Email comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''Balloting Materials Postage.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Steven Monteith at (202) 268–6983, or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION: With the growth of no excuse absentee voting, and the spread of vote-by-mail efforts throughout the country, the United States Postal Service® has noted an increase in ballots mailed back to Election Officials with insufficient postage. Each election cycle presents a different set of parameters for ballot creation and for the size and weight of the mail piece. As a result, we believe that many voters may not be adequately informed of the sufficient amount of postage required to return a ballot by mail.

To rectify this problem, the Postal Service is proposing that the balloting materials for all types of ballots whether disseminated hardcopy or electronically not qualified under the special exemption for military and overseas voting or returned under Business Reply Mail service must indicate in a prominent location the proper amount of First-Class Mail® postage that must be paid. This information must be included in the ballot materials (i.e., on the ballot, ballot instructions, mailing instructions, or the envelope) with the marking ''Sufficient First-Class Mail postage must be applied.'' Alternatively, the marking ''Apply sufficient First-Class Mail postage here'' could be printed in the upper right corner of the address side of the envelope used by the voter to return the ballot to election officials.

Additionally, the Postal Service is proposing that the balloting material indicate in a prominent location the specific First-Class Mail postage amount required for the return of the ballot to election officials, unless the ballot qualifies under the special exemption or is returned under Business Reply Mail service.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410 (a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

[Revise the heading of 703 as follows:]

703 Nonprofit Standard Mail and/or Other Unique Eligibility

* * * * *

[Revise the heading of 8.0 as follows:]

8.0 Balloting Materials

[Renumber 8.1 and 8.2 as 8.2 and 8.3. Add new 8.1 as follows:]

8.1 Basic Standards

8.1.1 Definition

Balloting materials include postcard applications, all ballot types, voting instructions, mailing instructions, and return envelopes.

8.1.2 Postage

Unless a ballot meets the eligibility requirements under 8.2 or is returned under 505.1.0, Business Reply Mail service, ballot materials for any election whether disseminated hardcopy or electronically must indicate in a prominent location that the proper amount of postage must be paid. This information must be included in the ballot materials with the marking ''First-Class Mail postage must be applied.'' Alternatively, the marking ''Apply First-Class Mail postage here'' may be printed in the upper right corner of the address side of the return envelope. Election officials should consult with postal officials to assist with mailpiece design, barcode placement, and to determine the proper amount of postage required for mailing ballots to voters and the return of ballots to election officials.

8.1.3 Notification of Postage Requirement on Return Ballots

Except for ballots mailed under 8.2 or returned under 505.1.0, Business Reply Mail service, all return ballot types for any election whether disseminated hardcopy or electronically must indicate in a prominent location on the balloting materials the specific amount of First-Class Mail postage required for return by mail to election officials.

[Revise the heading of renumbered 8.2 as follows:]

8.2 Special Exemption

8.2.1 Definition

[Revise the introductory text of renumbered 8.2.1 as follows:]

Balloting materials may be sent through the mail without prepayment of postage to enable persons in the following categories to apply for registration and vote by absentee ballot when absent from the place of voting residence and otherwise eligible to vote as an absentee:

* * * * *

[Delete renumbered heading 8.3, Marking, and renumber 8.3.1 as 8.2.5, Exhibit 8.3.1 as Exhibit 8.2.5, 8.3.2 as 8.2.6, Exhibit 8.3.2 as Exhibit 8.2.6, and 8.3.3 as 8.2.7.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2013–10347 Filed 5–1–13; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2009–0961; FRL–9806–8]

Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). With this proposed rule, EPA is proposing to grant final authorization to Georgia for these changes. Along with this proposed rule, EPA is publishing an immediate final rule in the ''Rules and Regulations'' section of today's **Federal Register** pursuant to which EPA is authorizing these changes. EPA did not issue a proposed rule before today because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the immediate final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the immediate final rule in today's **Federal Register** will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA will withdraw the immediate final rule and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by June 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2009–0961, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: gleaton.gwen@epa.gov*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below)
- *Mail:* Send written comments to Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office'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–R04–RCRA–2009–0961. 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. You may view and copy Georgia's applications at the EPA, Region 4, RCRA Division, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

You may also view and copy Georgia's applications from 8:00 a.m. to 4:00 p.m. at the Georgia Department of Natural Resources, Environmental Protection Division, 2 Martin Luther King, Jr. Drive, Suite 1154 East Tower, Atlanta, Georgia 30334–4910; telephone number (404) 656–2833. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; fax number: (404) 562–9964; email address: *gleaton.gwen@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: March 28, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–10406 Filed 5–1–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0082; 4500030114]

RIN 1018–AY20

Endangered and Threatened Wildlife and Plants; Proposed Revision of Critical Habitat for the Comal Springs Dryopid Beetle, Comal Springs Riffle Beetle, and Peck's Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the October 19, 2012, proposed revision of critical habitat for the Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Peck's cave amphipod (*Stygobromus pecki*) under the Endangered Species Act of 1973, as amended. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod 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 proposed rule, the associated draft economic analysis (DEA), and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published October October 19, 2012, at 77 FR 77 FR 64272, is reopened. *Written Comments:* We will consider comments received or postmarked on or before June 3, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public Information Meeting: We will hold a public information meeting on Friday, May 17, 2013, from 5:30 p.m. to 6:30 p.m. (see **ADDRESSES** section, below).

Public Hearing: We will hold a public hearing on Friday, May 17, 2013 from 7:00 p.m. to 8:30 p.m. (see **ADDRESSES** section, below).

ADDRESSES:

Document Availability: You may obtain copies of the proposed rule and DEA on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0082 or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods, or at the public information meeting or public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2012–0082, which is the docket number for this rulemaking, and follow the directions for submitting a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0082; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Public Information Meeting and Public Hearing: The public informational session and hearing will be held at San Marcos Activity Center, 501 E. Hopkins, San Marcos, TX 78666. People needing reasonable accommodation in order to attend and participate in the public hearing should contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

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: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone at 512–490–0057, extension 248; or by facsimile at 512–490–0974. 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 revision of critical habitat for Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod that published in the **Federal Register** on October 19, 2012 (77 FR 64272), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. 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 Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether there are threats to the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod 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 these species and their habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of these species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Any data documenting the extent of subsurface areas used by any of the species for breeding, feeding, or sheltering.

(4) Land use designations and current or planned activities in the subject areas and the possible impacts of these designations or activities on both species and their proposed critical habitat.

(5) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat.

(6) Any foreseeable economic, national security, or other relevant impacts of 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.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those areas that may benefit from the proposed Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan (HCP). Copies of the draft HCP are available from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(9) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, 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 64272) during the initial comment period from October 19, 2012, to December 18, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. Verbal testimony may also be presented during the public hearing (see **DATES** and **ADDRESSES** sections). We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0082, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2012–0082, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Information Meeting and Public Hearing

We are holding a public information meeting and a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section (above). We are holding the public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed revision of critical habitat for the Comal Springs invertebrates, and the associated DEA. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony. In contrast to the hearing, the public information meeting will allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on the proposed rule and its associated DEA. We cannot accept verbal testimony at the public information meeting; verbal testimony can only be accepted at the public hearing. Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. At the public hearing, formal verbal testimony will be transcribed by a certified court reporter and will be fully considered in the preparation of our final determination. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons with disabilities needing reasonable accommodations to participate in the public information meeting or public hearing should contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the public information meeting or public hearing to help ensure availability; at least 2 weeks' prior notice is requested for American Sign Language needs.

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod in this document. For more information on previous Federal actions concerning the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod, refer to the proposed revision of critical habitat published in the **Federal Register** on October 19, 2012 (77 FR

64272), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2012–0082) or from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The final rule to list Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod as endangered species was published in the **Federal Register** on December 18, 1997 (62 FR 66295). Critical habitat was not designated at the time of listing due to the determination by the Service that designation for the three invertebrate species was not prudent because it would not provide benefits to the species beyond listing and the subsequent evaluation of activities required under section 7 of the Act. The lack of designated critical habitat for these species was subsequently challenged by the Center for Biological Diversity in the U.S. District Court for the District of Columbia. As part of a stipulated settlement agreement between the plaintiff and the Service, the Service subsequently proposed critical habitat on July 17, 2006 (71 FR 40588), and designated critical habitat for the species on July 17, 2007 (72 FR 39248).

On January 14, 2009, the Center for Biological Diversity, Citizens Alliance for Smart Expansion, and Aquifer Guardians in Urban Areas (*CBD, et al.* v. *Kempthorne,* No. 1:09-cv-00031–LY (W.D. Tex.)) filed suit in Federal Court (Western District of Texas) alleging that the Service failed to use the best available science in the critical habitat designation. On December 18, 2009, the parties filed a settlement agreement where we agreed to submit a revised proposed critical habitat determination for publication in the **Federal Register** by October 17, 2012, and a final revised determination by October 13, 2013.

On October 19, 2012, we published a proposed rule to revise critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod (77 FR 64272). We proposed to designate approximately 39.4 acres (ac) (15.56 hectares (ha)) of surface area and 139 ac (56 ha) of subsurface area in two units (Comal and Fern Bank Springs Units) located in Comal and Hays Counties, Texas, as critical habitat for Comal Springs dryopid beetle; approximately 54 ac (22 ha) of surface area in two units (Comal and San Marcos Springs Unit) located in Comal and Hays Counties, Texas, as critical habitat for the Comal Springs riffle beetle; and approximately 38.4 ac (15.16 ha) of surface area and 138 ac (56 ha) of subsurface area in two units (Comal and Hueco Springs Units) located in Comal and Hayes County, Texas, as critical habitat for Peck's cave amphipod. In total, approximately 169 ac (68 ha) are proposed as revised critical habitat for all three species in Hays and Comal Counties, Texas.

That proposal had a 60–day comment period, ending December 18, 2012. In accordance with the December 18, 2009, settlement agreement, we will submit for publication in the **Federal Register** a final revised critical habitat designation for Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod on or before October 13, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod, the benefits of critical habitat include public awareness of the presence of either species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat; however, in the proposed rule we explained that we are considering the exclusion of the lands covered by the Edwards Aquifer Recovery Implementation Program HCP that provide for the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod (77 FR 64272, October 19, 2012). The final decision on whether to exclude any area will be based on the best scientific data available at the time of the final designation, including information obtained during the comment periods and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed revised critical habitat designation, which 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 revision of critical habitat designation for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave

amphipod (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for these species.

The ''without critical habitat'' scenario represents the baseline for the analysis, and considers the protections already afforded the species regardless of critical habitat designation. The baseline for this analysis is the state of regulation, absent designation of critical habitat, that provides protection to the species under the Act, as well as under other Federal, State, and local laws and conservation plans. The baseline includes sections 7, 9, and 10 of the Act to the extent that they are expected to apply absent the designation of critical habitat for the species. The analysis qualitatively describes how baseline conservation for the Comal Springs invertebrates is currently implemented across the proposed revised designation in order to provide context for the incremental analysis (Chapters 2 of the DEA).

The ''with critical habitat'' scenario describes and monetizes the incremental impacts specifically due to designation of revised critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for these species. In other words, the incremental costs are those attributable solely to the designation of revised critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks at baseline impacts incurred from the listing of the species and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat designation. For a further description of the methodology of the analysis, see Appendix B ''Framework for Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod 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 revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

In the DEA, we concentrated on the activities of primary concern with respect to potential adverse modification of critical habitat. The key concerns are the potential for activities to result in changes to existing water flow regimes; the introduction or augmentation of nonnative species; and physical, biological, or chemical changes to current habitat conditions. Within these activity categories, we focus our analysis on those projects and activities that are considered reasonably likely to occur within the proposed revised critical habitat area. This includes projects or activities that are currently planned or proposed, or that permitting agencies or land managers indicate are likely to occur.

When a species is federally listed as an endangered or threatened species, it receives protection under the Act. For example, under section 7 of the Act, Federal agencies must consult with the Service to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of the species. Economic impacts of conservation measures undertaken to avoid jeopardy to the species are considered baseline impacts in our analysis, as they are not generated by the critical habitat designation. In other words, baseline conservation measures and associated economic impacts are not affected by decisions related to critical habitat designation for these species. Other baseline protections accorded listed species under the Act and other Federal and State regulations and programs are described in Chapter 2 of the DEA.

The only Federal regulatory effect of the designation of critical habitat is the prohibition on Federal agencies taking actions that are likely to adversely modify critical habitat. They are not required to avoid or minimize effects unless the effects rise to the level of destruction or adverse modification as those terms are used in section 7 of the Act. Even then, the Service must recommend reasonable and prudent alternatives that can be implemented consistent with the intended purpose of the action, that are within the scope of the Federal agency's legal authority and jurisdiction, and that are economically and technologically feasible. Thus, while the Service may recommend conservation measures, unless the action is likely to destroy or adversely modify critical habitat, implementation of recommended measures is voluntary and Federal agencies and applicants have discretion in how they carry out their section 7 mandates.

Thus, the direct, incremental impacts of critical habitat designation stem from the consideration of the potential for destruction or adverse modification of critical habitat during section 7 consultations. The two categories of direct, incremental impacts of critical habitat designation are: (1) The administrative costs of conducting section 7 consultation; and (2) implementation of any conservation efforts requested by the Service through section 7 consultation, or required by section 7 to prevent the destruction or adverse modification of critical habitat.

The DEA describes the types of project modifications currently recommended by the Service to avoid jeopardy to the Comal Springs invertebrates in proposed critical habitat (''baseline'' project modifications). These baseline project modifications would be recommended in occupied habitat areas regardless of whether critical habitat is designated for these species. Although the standards for jeopardy and adverse modification of critical habitat are not the same, because the degradation or loss of habitat is a key threat to the Comal Springs invertebrates, our jeopardy analyses for these species would already consider the potential for project modifications to avoid the destruction of habitat; therefore recommendations to avoid jeopardy would also likely avoid adverse modification or destruction of critical habitat for these species.

The designation of critical habitat may, under certain circumstances, affect actions that do not have a Federal nexus and thus are not subject to the provisions of section 7 under the Act. Indirect impacts are those unintended changes in economic behavior that may occur outside of the Act that may occur through other Federal, State, or local actions, and that are caused by the designation of critical habitat. Appendix A of the DEA discusses the common types of indirect impacts that may be associated with the designation of critical habitat, such as time delays, regulatory uncertainty, and negative perceptions related to critical habitat designation on private property. These types of impacts are not always considered incremental. In the case that these types of conservation efforts and economic effects are expected to occur regardless of critical habitat designation, they are appropriately considered baseline impacts in this analysis.

We do not anticipate recommending incremental conservation measures to

avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of these species. Therefore, incremental impacts of critical habitat designation are expected to be limited to the costs of additional administrative effort in section 7 consultations to consider adverse modification, as described in Chapter 2 of the DEA. Although we recognize that the standards for jeopardy and adverse modification of critical habitat are not the same, with the latter focusing more closely on effects to conservation of the species, in this case and for the reasons described above, the designation of critical habitat in occupied areas would likely result only in incremental effects over and above the costs associated with consultation due to the presence of the species. A number of factors limit the extent to which the proposed critical habitat designation will result in incremental costs, including the fact that all the proposed critical habitat is occupied by the species, the species' survival is so closely linked to the quality of their habitat, the species have limited ability to move beyond their immediate locations, few actions are carried out in the area that are subject to a Federal nexus, and a portion of the proposed habitat is currently managed for conservation.

Quantified incremental impacts are limited to the administrative costs of section 7 consultation. The Service anticipates two consultations with the Department of Defense operations, and six consultations with the Army Corps of Engineers pertaining to several construction-related activities in the Comal Springs Unit and San Marcos Springs Unit that may require a section 404 permit over the next 20 years. There are four existing HCPs that include these three Comal species and two pending HCPs that may include these three Comal species in which designation of critical habitat may trigger re-initiation of consultation on the issuance of incidental take permits for HCPs. Re-initiation of intraservice section 7 consultation for existing HCPs is not automatic and would likely only occur when an incidental take permit holder seeks amendment of the incidental take permit. We can foresee no likely Federal activities in the future that would result in section 7 consultations caused by the designation of critical habitat beyond those that would occur due to the listing of the species. We anticipate no new project proponents or additional activities that would require consultation due to critical habitat designation. The Comal Springs invertebrates have been listed since 1997. It is unlikely that any additional entities will pursue HCPs as a result of this revised critical habitat designation.

The aquatic habitat, in which the three Comal Springs invertebrates are found, also encompasses habitat for other species listed as endangered or threatened under the Act. San Marcos Springs currently has critical habitat designated for the fountain darter (*Etheostoma fonticola*), San Marcos salamander (*Eurycea nana*), and Texas wild-rice (*Zizania texana*). Comal Springs has critical habitat designated for the fountain darter.

Some projects within the proposed revised critical habitat area for the Comal Springs invertebrate species have already incorporated conservation measures to avoid adversely affecting the critical habitat of the listed fountain darter, San Marcos salamander, and Texas wild-rice. The Comal Springs invertebrate species, therefore, may benefit from the conservation efforts already in place for the fountain darter, San Marcos salamander, and Texas wild-rice.

In addition, groundwater production from the Edwards Aquifer is regulated by the Edwards Aquifer Authority (EAA), a special groundwater district established by the State of Texas Edwards Aquifer Authority Act (hereafter, ''EAA-Act''). Under the EAA-Act, EAA is responsible for groundwater management in a jurisdictional area that spans 8,800 square miles across eight counties, including portions of Comal and Hays Counties. The EAA-Act also directs EAA to implement management practices that ensure the continuous minimum springflows of Comal Springs and San Marcos Springs to protect endangered and threatened species. The Service has developed minimum flow guidelines for the San Marcos salamander, Texas blind salamander, and Texas wild-rice, and fountain darter. These guidelines have been incorporated into the EAA's Demand Management/Critical Period Management Trigger Levels, which determine aquifer-wide pumping reductions necessary during periods of reduced springflow.

The total projected incremental costs of administrative efforts resulting from section 7 consultations is approximately $14,000 for water use actions, over 20 years ($1,200 on an annualized basis), assuming a 7 percent discount rate, and $57,000 for other actions, over 20 years ($5,000 on an annualized basis), assuming a 7 percent discount rate. The analysis estimates potential future administrative impacts based on the historical rate of consultation on co-occurring listed species in areas proposed as revised critical habitat as discussed Chapter 2 of the DEA.

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.

Required Determinations—Amended

In our October 19, 2012, proposed rule (77 FR 64272), 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 that data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy Supply, Distribution, or Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory

flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised 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 revised critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as changes to existing flow regimes, introduction or augmentation of nonnative species, and physical, biological, or chemical changes to current habitat conditions. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section of the October 19, 2012, proposed rule (77 FR 64272)).

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of revised critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. Quantified incremental impacts that may be borne by small entities are limited to the administrative costs of section 7 consultation related to actions that alter water quality and quantity (Appendix B of the DEA).

We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy to the species, and as such, the economic analysis forecasts few incremental economic impacts as a result of the designation of revised critical habitat for these species. Those incremental impacts forecasted are solely related to administrative costs for adverse modification analyses in section 7 consultations. We forecast five formal section 7 consultations in the Comal Springs Unit and one formal section 7 consultation in the San Marcos Springs Unit relating to dam and retaining wall repair at Landa Lake and additional projects in the area surrounding Landa Lake that may require CWA 404 permits from the Corps in the future, as residential development is expanding in the area and funding for development and maintenance projects has increased relative to past years during the 20-year timeframe of the analysis. Due to uncertainty about when consultation will occur, the costs of these consultations are distributed evenly throughout the period of analysis. Because no projects, with or without a Federal nexus, are known, we do not attribute any costs to future actions in the Hueco Springs Unit in Comal County or the Fern Bank Springs Unit in Hays County. Re-initiation of section 7 consultation with the Service could potentially occur in 2013, for the Hays County-Regional Habitat Conservation Plan (RHCP), the Comal County RHCP, the South Edwards Plateau HCP, and the Cibolo Canyon Property HCP, as each of these HCPs manage activity within the Edwards Aquifer and thus may choose to consider impacts to critical habitat for all listed species within their designated plan areas. The costs of any potential reinitiated intra-Service Section 7 consultations resulting from voluntary changes to incidental take permits associated with the aforementioned HCPs are assumed to be distributed equally across the four proposed revised critical habitat units.

The Department of Defense consultations are not expected to involve small entities. Reinitiated consultations related to incidental take permits are typically conducted by the Service alone, and thus may not require a third party. Although a third party such as the Edwards Aquifer Authority, Comal County, or Hays County could take part in potential reinitiated intra-Service Section 7 consultations resulting from voluntary changes to incidental take permits associated with the aforementioned HCPs, none of these entities are small entities. One consultation in San Marcos Springs is anticipated to involve the State of Texas as a third party. The State is not a small entity. Five miscellaneous consultations are anticipated in the Comal Springs Unit related to construction-related activities. The majority of these administrative costs are expected to be borne by Federal entities, but some costs would be borne by third parties participating in section 7 consultations. These entities may include the City of New Braunfels (population of 59,600), as well as developers. The City of New Braunfels is not considered a small government, as its population exceeds 50,000. It is possible that up to five

developers could be included as third parties in these consultations. The total costs of these five actions together are estimated to be $1,900 to $2,100 annually, including Federal costs.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the 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 revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised 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.

Authors

The primary authors of this notice are the staff members of the Austin Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–09895 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 111014628–3329–01]

RIN 0648–BB54

Magnuson-Stevens Act Provisions; Implementation of the Shark Conservation Act of 2010

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the provisions of the Shark Conservation Act of 2010 (SCA) and prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. NMFS proposes this action to amend existing regulations and make them consistent with the SCA.

DATES: Written comments must be received by June 17, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0092, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0092 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Kim Marshall, National Marine Fisheries Service, NOAA; 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–1193; *Attn:* Kim Marshall.

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

Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available on the Federal e-Rulemaking Portal *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Marshall, 301–427–8556.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Shark Finning Prohibition Act (Pub. L. 106–557) (SFPA). Among other things, the SFPA amended section 307 of the Magnuson-Stevens Act to prohibit removing any of the fins of a shark (including the tail) and returning the remainder of the shark to the sea. In addition, the SFPA prohibited any person from having custody, control, or possession of shark fins aboard a fishing vessel without the corresponding carcass, and prohibited any person from landing shark fins without the corresponding carcass. NMFS published a final rule to implement the SFPA on February 11, 2002 (67 FR 6194).

In 2010, the President signed into law the Shark Conservation Act of 2010 (Pub. L. 111–348, Jan. 4, 2011) (SCA). The SCA amended two existing acts, the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), 16 U.S.C. 1826d *et seq.,* and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA), 16 U.S.C. 1801 *et seq.,* to improve the conservation of sharks.

In particular, the SCA amended the Magnuson-Stevens Act to prohibit any person from: (1) Removing any of the fins of a shark (including the tail) at sea; (2) having custody, control, or possession of a fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; (3) transferring a fin from one vessel to another vessel at sea, or receiving a fin in such transfer, unless the fin is naturally attached to the corresponding carcass; or (4) landing a fin that is not naturally attached to the corresponding carcass, or landing a shark carcass without its fins naturally attached. For the purpose of the SCA and these regulations, ''naturally attached,'' with respect to a shark fin, means to be attached to the corresponding shark carcass through some portion of uncut skin.

This proposed action would amend NMFS' regulations to implement these provisions of the SCA. Specifically, the proposed rule would amend regulations at 50 CFR Part 600, Subpart N to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. NMFS notes that it interprets the prohibitions in that section as applying to sharks, not skates and rays, and solicits public comment on whether clarification is needed in the regulatory text on this or any other issues (see **ADDRESSES**).

NMFS also proposes here to adopt language from section 103(b) of the SCA regarding individuals engaged in commercial fishing for smooth dogfish. While this proposed rule adopts the statutory text, NMFS intends to further develop those provisions in a subsequent rulemaking. This rule would also combine the existing sections §§ 600.1203 and 600.1204 into one section. The text in all sections would be amended to implement the provisions of the SCA.

The MSA authorizes the Secretary to regulate fisheries seaward of the inner boundary of the EEZ, which is defined as a line coterminous with the seaward boundary of each U.S. coastal state. 16 U.S.C. 1802(11). Thus, the SCA provisions apply to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, engaging in activities prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. Federal regulations pertaining to the conservation and management of specific shark fisheries are set forth in Parts 635, 648 and 660 of Title 50 of the Code of Federal Regulations. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel's fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements). This rule amends 50 CFR part 600, subpart N, and does not supersede or amend any other federal regulation or requirement related to the conservation and management of sharks.

The SCA also amended the Moratorium Protection Act, which provides for identification and certification of nations to address illegal, unreported, or unregulated fishing; bycatch of protected living marine resources; and, as amended by the SCA, shark catches. 16 U.S.C. 1826h–1826k. With regard to sharks, the Moratorium Protection Act provides for identification of a nation if its fishing vessels have been engaged during the preceding calendar year in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for sharks that is comparable to the United States, taking into account different conditions. 16 U.S.C. 1826k(a)(2). NMFS published a final rule that amends the Moratorium Protection Act regulations consistent with the SCA on January 16, 2013 (78 FR 3338).

Relationship of Regulations With Current State Rules

Several states and territories have enacted or are considering enacting statutes that address shark fins. Each statute differs in its precise details, but generally most contain a prohibition on possession, landing or sale of, or other activities involving, shark fins. Depending on how they are interpreted and implemented, these statutes have the potential to undermine significantly conservation and management of federal shark fisheries.

Under the Magnuson-Stevens Act, the United States claims sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the U.S. exclusive economic zone (EEZ) and also claims exclusive fishery management authority for specified resources beyond the EEZ. 16 U.S.C. 1811. To conserve and manage fishery resources and promote domestic commercial and recreational fishing under sound conservation and management principles, the Magnuson-Stevens Act authorizes NMFS and Fishery Management Councils to develop and implement federal fishery management plans, which must be consistent with ten national standards and other mandatory provisions set forth in the statute. 16 U.S.C. 1801, 1851(a) and 1853(a). The Magnuson-Stevens Act defines ''conservation and management'' as including measures ''which are designed to assure that . . . a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis.'' 16 U.S.C. 1802(5). National Standard 1 requires that conservation and management measures under a fishery management plan, plan amendment or implementing regulations ''prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' 16 U.S.C. 1851(a)(1). Obtaining optimum yield, which includes providing the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, is a fundamental principle under the Magnuson-Stevens Act. State prohibitions on possession, landing, transfer, or sale of sharks or shark fins lawfully harvested seaward of state boundaries constrain the ability of federal fishery participants to make use of those sharks for commercial and other purposes.

Neither the SFPA nor the SCA suggest that Congress intended to amend the Magnuson-Stevens Act to prohibit the possession or sale of shark fins. Rather, Congress chose to prohibit discarding shark carcasses at sea, and required that fins be naturally attached to the carcass of the corresponding shark. The SCA therefore reflects a balance between addressing the wasteful practice of shark finning and preserving opportunities to land and sell sharks harvested consistent with the Magnuson-Stevens Act. Although state shark fin laws are also intended to conserve sharks, they may not unduly

interfere with the conservation and management of federal fisheries.

The Magnuson-Stevens Act preempts state regulation of fisheries in waters outside the boundaries of a state, except according to the narrow opportunities for state regulation specified at 16 U.S.C. 1856(a)(3). Within the U.S. EEZ, a State may regulate a fishing vessel only where: (1) The fishing vessel is registered under the laws of that State, and there is no federal fishery management plan or regulations for the fishery, or the State's laws and regulations are consistent with the applicable federal plan and regulations; or (2) the applicable federal plan delegates management of the fishery to the State, and the State's laws and regulations are consistent with that plan (16 U.S.C. 1856(a)(3)(A–B)). ''State'' means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States (16 U.S.C. 1802(41)).

State or territorial shark fin laws are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. If state or territorial laws are construed or interpreted so they are consistent with federal law, fishery management plans and regulations, those laws are not preempted. For example, if a state law prohibiting the possession, landing, or sale of shark fins is interpreted not to apply to sharks legally harvested in federal waters, the law would not be preempted. On the other hand, a state law that interferes with accomplishing the purposes and objectives of the Magnuson-Stevens Act would be preempted. As described above, promoting commercial fishing under sound conservation and management principles is a key purpose of the Act. If sharks are lawfully caught in federal waters, state laws that prohibit the possession and landing of those sharks with fins naturally attached or that prohibit the sale, transfer or possession of fins from those sharks unduly interfere with achievement of Magnuson-Stevens Act purposes and objectives.

The Magnuson-Stevens Act generally does not preempt a state's laws applicable to its fisheries in state waters and states that, ''Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.'' 16 U.S.C. 1856(a)(1). Regulations issued in 2002 at 50 CFR 600.1201(c) provide that: ''Nothing in this regulation supersedes more restrictive state laws or regulations regarding shark finning in state waters.'' The intent of this provision was to affirm that the regulations would not infringe on a state's jurisdiction or authority. It was not intended to imply that states may interfere with or impede accomplishment of fishery management objectives for federally-managed commercial and recreational fisheries. NMFS' view regarding state and federal authority has not changed since 2002, but the agency believes that section 600.1201(c) could be clarified. Thus, this proposed rule would revise section 600.1201(c) to state that the subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the other provisions of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are included at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS proposes this action to implement the SCA. This proposed action would revise existing regulations that implement the SFPA, which banned ''shark finning'' (the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea). The proposed rule would amend regulations to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. The SCA applies to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, who engages in activities prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel's fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements).

This rule is expected to directly affect commercial and for-hire fishing vessels that land sharks harvested seaward of the inner boundary of the U.S. EEZ or possess permits which allow them to land sharks harvested seaward of the inner boundary of the U.S. EEZ. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

Sharks are harvested in several commercial fisheries that occur in the U.S. EEZ, including the spiny dogfish fishery in the northeast United States, the Atlantic HMS fishery in the northeast and southeast United States, the west coast HMS and groundfish fisheries, and the Hawaii and American Samoa-based pelagic longline fisheries, which allow retention of incidentally caught sharks. In addition, groundfish vessels in the Gulf of Alaska and Bering Sea and Aleutian Islands can retain sharks, although there are no directed shark fisheries and the vast majority of incidentally caught sharks are discarded.

In 2011, 2,743 vessels were issued federal spiny dogfish permits, but only 326 of these vessels actually landed spiny dogfish. The total ex-vessel value of commercially landed spiny dogfish in calendar year 2011 was about $4.646 million. Thus, average ex-vessel revenue per vessel from spiny dogfish was approximately $14,250 in calendar year 2011. Based on these figures, all spiny dogfish vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of October 2011, NMFS had issued 217 directed shark permits and 262 incidental shark permits in the Atlantic

highly migratory species fishery. In 2011, the ex-vessel revenues for all sharks landed in the Atlantic highly migratory species fishery totaled $3,067,116. Thus, the average ex-vessel revenue per permitted vessel was approximately $6,400 in 2011. Based on these figures, all Atlantic highly migratory species shark vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Most sharks on the west coast are caught in the drift gillnet component of the HMS fishery and the northwest groundfish fishery. In 2011, 243 commercial vessels had shark landings on the west coast and total ex-vessel revenue for west coast shark landings was $349,634. Thus, in 2011, average ex-vessel revenue per vessel from shark landings was approximately $1,450. Average total ex-vessel revenue per vessel was about $107,000 in 2011. The maximum total ex-vessel revenue for a single vessel that commercially harvested sharks on the west coast was approximately $1.48 million in 2011. Based on these figures, all west coast commercial fishing vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Entry into the Hawaii-based pelagic longline fishery is limited, with a maximum of 164 vessels allowed. As of March 2012, 132 vessels held Hawaii longline limited entry permits (out of 164 total permits). NMFS estimates the 2010 ex-vessel revenue of pelagic fish landed by Hawaii-based longline vessels to be about $70 million, or approximately $427,000 per vessel. In addition, in 2010, 267,000 pounds of sharks were landed by Hawaii-based longline vessels, and the average price for these sharks was $0.50 per pound in 2010. Thus, ex-vessel revenue from shark landings was $135,000 and average revenue per vessel was approximately $1,020. Thus, shark landings represent a very small portion of the ex-vessel revenue for the Hawaii-based longline vessels. In 2009, 50 vessels obtained American Samoa longline limited entry permits, and 26 of those vessels actively fished. These vessels' operations are economically smaller than those based in Hawaii. Based on these figures, all Hawaii and American Samoa-based pelagic longline vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of 2009, approximately 867 vessels operated in the Bering Sea/Aleutian Islands (BSAI) or Gulf of Alaska (GOA) groundfish fisheries, with some vessels operating in both. Approximately 97% of shark catch in Alaska groundfish fisheries is discarded. The other 3 percent is retained and largely processed into fishmeal. Both large and small fishing entities operate in the BSAI groundfish fisheries. In 2008, 215 small groundfish entities operated in the BSAI, with estimated average 2008 gross revenues from all sources of about $1.53 million. Most of these (204) are catcher vessels, with estimated average gross revenues of $1.49 million. About half of the catcher-vessels (103) are trawlers with average gross revenues of about $1.71 million, 46 are hook-and-line vessels with average gross revenues of about $0.58 million, and 62 are pot vessels with average gross revenues of about $1.70 million. There were 11 small catcher-processors, seven of which were hook-and-line vessels with average gross revenues of about $2.65 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. The key fleets harvesting shark are the Pollock trawlers and the hook-and-line vessels fishing for Pacific cod. All of the Pollock trawlers are believed to be large entities, either because the vessels themselves gross more than $4 million or because they are members of American Fisheries Act cooperatives that gross more than that. The BSAI hook-and-line vessels targeting Pacific cod are predominately large vessels, though two are considered small.

In 2008, 702 small groundfish entities operated in the GOA groundfish fisheries, with average revenues from all sources of about $0.60 million. Almost all of these vessels (697) are catcher vessels with average revenues of about $0.60 million. A majority of the catcher-vessels (520) use hook-and-line gear and have average revenues of about $0.49 million, while 73 are trawlers with average revenues of about $1.27 million, and 142 are pot vessels with average revenues of $0.85 million. There were five catcher-processors, mostly hook-and-line vessels, with average gross revenues of about $1.52 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. Halibut hook-and-line vessels took a significant proportion of the shark catch. There were an estimated 270 small sablefish hook-and-line vessels with an estimated average gross revenue from all sources of $0.77 million, an estimated 128 Pacific cod hook-and-line vessels with an average gross of $0.59 million, an estimated 21 small pelagic pollock trawlers with average gross revenues of about $1.02 million, five non-pelagic trawlers targeting arrowtooth flounder with average gross revenues of about $0.58 million, and five non-pelagic trawlers targeting shallow water flatfish with average gross revenues of about $0.65 million.

Owners of charter boats or headboats (*i.e.,* for-hire vessels) that are used to fish for, take, retain, or possess Atlantic tunas, sharks, swordfish, or billfish must obtain an Atlantic HMS Charter/Headboat permit. As of October 2011, NMFS had issued 4,194 Atlantic HMS Charter/Headboat permits. No information is currently available regarding the number of for-hire vessels that specifically land sharks in the Atlantic, Gulf of Mexico, or Caribbean Sea. However, in 2010, average annual gross revenue for headboats and charter vessels in the Northeast were approximately $214,000 and $27,650, respectively. In the South Atlantic, average annual gross revenue for headboats and charter vessels in 2009 were approximately $187,500 and $106,000, respectively. In the Gulf of Mexico, average annual gross revenue for headboats and charter vessels were about $230,000 and $45,500, respectively. According to these studies, no individual for-hire vessel had annual gross revenues exceeding $7 million. Thus, all for-hire vessels that may be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Party and charter boats target sharks on the west coast as well. In 2011, about 620,256 west coast recreational trips (days) by party and charter boats retained about 16 metric tons of sharks. Similarly, an estimate of about 778,798 recreational trips (days) by west coast private or rental boats retained about 48 metric tons of sharks in 2011. In 2011, only 13 for-hire vessels were known to land sharks in California that were harvested from the EEZ. In 2000, the average annual gross revenue for a large or medium size charter vessel on the west coast was approximately $401,000, while the maximum annual gross revenue for one of these vessels was $7 million. In 2007, the average annual gross revenue for a charter vessel in Washington and Oregon was approximately $70,600. Based on these figures, all for-hire vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities. Based on these figures, all charter boats, headboats, and that land

sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

NMFS does not have information on types of small entities other than those discussed above. However, other types of small entities may exist. In addition, NMFS has little information on the number of transshipment vessels that would be affected by this rule. However, it is likely that the number of vessels would be small.

The SCA and this proposed rule would not allow fins to be removed from sharks at sea. Shark fins from for-hire vessels generally are not removed from the carcass and not sold in commerce, so for-hire vessels are not expected to experience any economic effects as a result of this proposed rule.

In many commercial fisheries across the country, such as Atlantic HMS and Northeast spiny dogfish, SCA provisions are consistent with current federal regulations. Further, directed fishing for sharks is prohibited and incidentally harvested sharks are largely processed as fishmeal in the BSAI and GOA groundfish fisheries. As a result, commercial vessels in these fisheries are not expected to experience any economic effects as a result of this proposed rule.

The implementation of state shark fin laws in Washington, Oregon, California, Hawaii, and American Samoa, raises concerns about potential negative economic effects on some entities in West Coast, Western Pacific and other fisheries. State or territorial shark fin laws are preempted under the Supremacy Clause of the U.S. Constitution if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. The clarification provided in this proposed rule may have positive economic effects on these fisheries. Therefore, the effect of this proposed rule on the commercial vessels in these fisheries is expected to be non-existent or potentially positive.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

One alternative, the status quo, was considered for the proposed action. This alternative would maintain the current regulations under the SFPA. Under this alternative, any person may remove and retain on the vessel fins (including the tail) from a shark harvested seaward of the inner boundary of the U.S. EEZ; however, the corresponding carcass must also be retained on board the vessel. It would be a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of the regulations if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel. This alternative was rejected because it would not comply with the requirements of the SCA. No other alternatives meet the statutory requirements, and so none were considered.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: April 26, 2013.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600–MAGNUSON–STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

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

■ 2. Subpart N is revised to read as follows:

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

Sec.
600.1200 Purpose and scope.
600.1201 Relation to other laws.
600.1202 Definitions.
600.1203 Prohibitions.

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

§ 600.1200 Purpose and scope.

The regulations in this subpart implement the Shark Conservation Act of 2010.

§ 600.1201 Relation to other laws.

(a) Regulations pertaining to conservation and management (including record keeping and reporting) for certain shark fisheries are also set forth in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), 660 (for fisheries off West Coast states), and 665 (for fisheries in the western Pacific) of this chapter.

(b)(1) This subpart does not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

(2) *State,* for the purpose of paragraph (b)(1) of this section, means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.

(c) This subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

(d) State and territorial statutes that address shark fins are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the Shark Conservation Act of 2010, regulations under this part, and applicable federal fishery management plans and regulations.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Fin means any of the fins of a shark (including the tail) or a portion thereof.

Land or landing means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shore side location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Naturally attached, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) It is unlawful for any person to do, or attempt to do, any of the following:

(1) Remove a fin at sea.

(2) To have custody, control, or possession of a fin, aboard a fishing vessel, unless the fin is naturally attached.

(3) Transfer a fin from one vessel to another vessel at sea unless the fin is naturally attached.

(4) Receive a fin in a transfer from one vessel to another vessel at sea unless the fin is naturally attached.

(5) Land a fin unless the fin is naturally attached.

(6) Land a shark carcass without all of its fins naturally attached.

(7) Possess, purchase, offer to sell, or sell fins or shark carcasses taken, transferred, landed, or possessed in violation of this section.

(8) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator, or by the Director of the Office of Sustainable Fisheries in the case of the Atlantic Highly Migratory Species, access to or inspection or copying of any records pertaining to the landing, sale, transfer, purchase, or other disposition of fins or shark carcasses.

(b) For purposes of this section, it is a rebuttable presumption that:

(1) If a fin is found aboard a vessel, other than a fishing vessel, without being naturally attached, such fin was transferred in violation of this section.

(2) If, after landing, the total weight of fins landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of this section.

[FR Doc. 2013–10439 Filed 5–1–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 85
Thursday, May 2, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet May 28–30, 2013. The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at The Liaison Capitol Hill Hotel, 415 New Jersey Avenue NW., Washington, DC 20001. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 3901 South Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202)720–6199; or email: *Shirley.Morgan@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The Honorable Secretary of Agriculture Tom Vilsack, and the Under Secretary of Research, Education, and Economics Dr. Catherine Woteki have been invited to provide brief remarks and welcome the new Board members during the meeting.

On Tuesday, May 28, 2013, an orientation session for all members will be held from 1:00 p.m.–5:30 p.m. Specific topics of discussion will include a briefing on ethical behavior for federal advisory committee members, briefings regarding the USDA's Research, Education, and Economics Mission Area, a discussion on the role of the Board in advising the Secretary of Agriculture, Land Grant Institutions and Congress, and a discussion on how to most effectively organize the work of the Board and its Committees.

On Wednesday, May 29, 2013 the full Advisory Board will convene at 8:00 a.m. followed shortly thereafter with the appointment of a new Chair of the Advisory Board. The meeting will also include: brief introductions of new Board members, incumbents, and guests; the election of the Vice-Chair of the Advisory Board; comments from a variety of distinguished leaders, experts, and departmental personnel; and items of board business. Specific items on the agenda will include a discussion related to the international programs related to the Research, Education, and Economics Mission Area, and updates from each of the agencies of the Mission Area. The afternoon session will end by 5:00 p.m. An evening session will convene at 6:00 p.m. and include a vote for the fiscal year 2013 executive committee members of the Board. The meeting will adjourn for the day by 8:00 p.m.

On Thursday, May 30, 2013, the Board will reconvene at 8:00 a.m. to: discuss initial recommendations resulting from the meeting and future planning for the Board; to organize the membership of the committees, and working groups of the Advisory Board; and to finalize Board business for the meeting. The Board Meeting will adjourn by 12:00 p.m. (noon).

This meeting is open to the public and any interested individuals wishing to attend. Opportunity for public comment will be offered each day of the meeting. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Thursday, June 13, 2013). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 16th day of April 2013.

Catherine Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2013–10386 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Nominations of Members for the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces the solicitation for nominations to fill 8 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: All nomination materials should be mailed in a single, complete package and postmarked by June 28, 2013.

ADDRESSES: The nominee's name, resume, and completed Form AD–755 must be sent to the U.S. Department of Agriculture, National Research, Extension, Education, and Economics Advisory Board Office, 1400 Independence Avenue SW., Room 3901, South Building, Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue SW., Room 3901, South Building, Washington, DC 20250–2255, telephone: 202–720–3684; fax: 202–720–6199; email: *shirley.morgan@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural

Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) was amended by the Farm Security and Rural Investment Act of 2008 by deleting six members to the National Agricultural Research, Extension, Education, and Economics Advisory Board, which totals 25 members. Since the Advisory Boards inception by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for a one, two, and three-year term, respectively. The terms for 8 members who represent specific categories will expire September 30, 2013. Nominations for a 3-year appointment for these 8 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

The 8 slots to be filled are:

F. National Food Animal Science Society
G. National Crop, Soil, Agronomy, Horticulture, or Weed Science Society
L. 1890 Land-Grant Colleges and Universities
P. American Colleges of Veterinary Medicine
T. Rural Economic Development
U. National Consumer Interest Group
V. National Forestry Group
W. National Conservation or Natural Resource Groups

Individuals and organizations who wish to nominate experts for this or any other USDA advisory committee should submit a letter to the Secretary listing these individuals' names and business address, phone, and email contact information. These individuals may be contacted now or in the future to determine their interest in serving as a committee member.

Candidates who wish to be considered for membership on the National Agricultural Research, Extension, Education, and Economics Advisory Board should submit an AD–755 application form and resume to the Secretary of Agriculture. Cover letters should be addressed to the Secretary of Agriculture. The application form and more information about advisory committees can be found at *www.usda.gov/advisory_committees.xml.*

Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category, will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information.'' All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent all racial and ethnic groups, women and men, and person with disabilities.

Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture.

Done at Washington, DC, this 16th day of April 2013.

Catherine Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2013–10392 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0004]

Notice of Decision To Authorize the Importation of Fresh Barhi Dates From Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the United States of fresh dates of the cultivar Barhi from Israel. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh dates of the cultivar Barhi from Israel. In addition, based on the findings of a treatment evaluation document, we are advising the public of our decision to add a treatment schedule for *Ceratitis capitata* in Barhi dates to the Plant Protection and Quarantine Treatment Manual.

DATES: *Effective Date:* May 2, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737–1236; (301) 851–2114.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on January 9, 2013 (78 FR 1825–1826, Docket No. APHIS–2012–0004), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the United States of fresh dates (*Phoenix dactylifera* L.) of the cultivar Barhi (referred to below as Barhi dates) from Israel.

[1] To view the notice, supporting documents, and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0004.*

The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the treatment regulations) set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[2] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (a) sets out the process for adding, revising, or removing treatment schedules when there is no immediate need to make a change.

One of the measures that we proposed in the notice to mitigate the risk associated with the importation of Barhi dates from Israel was treating the dates with cold treatment for *Ceratitis capitata.* Because no such cold treatment schedule for Barhi dates previously existed in the PPQ Treatment Manual, in accordance with paragraph (a) of § 305.3 of the treatment regulations, the notice also announced the availability of a treatment evaluation document (TED) that evaluated the efficacy of cold treatment for Barhi dates as a mitigation for *C. capitata,* and described a cold treatment schedule for *C. capitata* in Barhi dates that we proposed to add to the PPQ Treatment Manual.

We solicited comments on the notice for 60 days ending on March 11, 2013. We received one comment by that date, from a private citizen. The commenter supported the importation of Barhi dates from Israel into the United States.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the United States of fresh Barhi dates from Israel subject to the following phytosanitary measures:

- The dates may be imported into the United States in commercial consignments only;
- The dates must be treated in accordance with 7 CFR part 305 for *C. capitata;* and
- The dates must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Israel stating that the consignment has begun or has undergone treatment T107–i, with the additional declaration stating that the fruit in the consignment was inspected and found free of *Mauginiella scaettae.*

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, Barhi dates from Israel will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatments regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

In addition, in accordance with the regulations in § 305.3(a)(2), we are announcing our decision to add a new cold treatment schedule T107–i for *C. capitata* in Barhi dates, as described in the TED, to the PPQ Treatment Manual. The new treatment will be listed in the PPQ Treatment Manual, which is available at the Web address and mailing address in footnote 2 of this document.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–10384 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–34–P

[2] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the APHIS PPQ Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Baker-Snoqualmie National Forest; Snohomish County, WA; Green Mountain Lookout Removal

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This project would remove the historic fire lookout on Green Mountain and relocate it to Circle Peak, authorizing the use of motorized equipment and mechanical transport within the Glacier Peak Wilderness in connection with the removal. Green Mountain Lookout is approximately one air mile inside Glacier Peak Wilderness, Darrington Ranger District, Mt. Baker-Snoqualmie National Forest. Circle Peak is on National Forest land outside Wilderness and approximately six miles southwest of Green Mountain.

DATES: Comments concerning the scope of the analysis must be received by June 3, 2013. The draft environmental impact statement is expected November 2013, and the final environmental impact statement is expected March 2014.

ADDRESSES: Send written comments to Attn: Todd Griffin, Project Leader, Mt. Baker-Snoqualmie National Forest, 2930 Wetmore Avenue, Suite 3A, Everett, Washington 98201. Comments may also be sent via email to *toddgriffin@fs.fed.us*, or via facsimile to (425) 783–0141.

FOR FURTHER INFORMATION CONTACT: Todd Griffin, Project Leader, at (360) 677–2258.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Green Mountain Lookout is located in the western portion of the 573,000-acre Glacier Peak Wilderness near Darrington, Washington. It was built in 1933 by the Civilian Conservation Corps as part of a fire detection system in the North Cascade Mountains. The lookout served in this role until 1984 when aerial fire detection became more prevalent; the fire staffing was gradually replaced by wilderness ranger staffing. In 1964 the North Cascades National Park Act expanded Glacier Peak Wilderness to include the point of Green Mountain on which the lookout is sited. In 1987, the lookout was listed on the National Register of Historic Places. Through the years, natural elements have taken a toll on the lookout. Maintenance and restoration efforts have been on-going for several decades, with major reconstruction in 1950 and 1998. In 2002, the lookout was disassembled and removed from Green Mountain in order to make repairs to a deteriorating foundation. In 2009, the repairs to the foundation were completed, and the lookout was flown back to its original location at Green Mountain and placed on the new foundation.

In 2010, a lawsuit was filed against the Forest Service seeking declaratory judgment and injunction requiring the removal of the lookout. The plantiff alleged that the Forest Service violated the Wilderness Act and the National Environmental Policy Act (NEPA) with the removal and reassembly of the lookout, and the use of mechanized transport. The court agreed with the plantiff's claims and ordered the Forest Service to remove the lookout. In an amended decision, the court granted a

motion that the Forest Service should be afforded the opportunity to determine how to move forward to implement the court's order to remove the lookout.

Purpose and Need for Action

The Purpose and Need is to comply with the Court directive requiring removal of Green Mountain Lookout while maintaining compliance with the Wilderness Act and National Historic Preservation Act.

1. There is a need for the Forest Service to comply with the 2012 Summary Judgment by the U.S. District Court, as amended, requiring the Forest Service to remove Green Mountain Lookout (Wilderness Watch v. Y. Robert Iwamoto and United States Forest Service, U.S. District Court for Western Washington, Case NO. C10–1797–JCC, 03/27/2012; as amended 09/20/2012).

2. There is a need to remove Green Mountain Lookout and restore the mountain top in such a manner as to respect the Wilderness character of Glacier Peak Wilderness while complying with the court directive (1964 Wilderness Act and Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan), Wilderness Forest-wide standards and guidelines, p. 4–115).

3. There is a need to manage historic properties and maintain compliance with the National Historic Preservation Act, associated regulations and policy, and the Forest Plan, while complying with the court directive (36 CFR 800; Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan), Archaeology Forest-wide Standards and Guidelines, p. 4–99).

Proposed Action

The Mt. Baker-Snoqualmie National Forest (MBS) proposes to remove Green Mountain Lookout from its current location within Glacier Peak Wilderness, and relocate the structure to Circle Peak, a similar mountain top outside of Wilderness but nearby on National Forest Service System (NFS) lands.The Proposed Action would include three elements in support of the project's Purpose and Need. It would:

1. Remove existing lookout at Green Mountain from Glacier Peak Wilderness and restore the mountain top. This element would ensure that the project would comply with the Summary Judgment of the Court.

2. Utilize motorized equipment and mechanical transport within Glacier Peak Wilderness for the removal of Green Mountain lookout. The Forest Service would complete a minimum requirement analysis (MRA) to determine whether motorized equipment and mechanized transport would be necessary for the minimum administration of the area with respect to Wilderness values.

3. Construct new foundation and relocate Green Mountain Lookout onto nearby Circle Peak. This element would address the need to manage historic properties and maintain compliance with the National Historic Preservation Act.

Connected actions associated with the removal of Green Mountain Lookout would include the following items:

- Designation of a staging area at Green Mountain Horse Pasture. This site would be utilized for temporary staging and storing of equipment and materials. Clearing of vegetation may be required at this site to ensure safe ingress and egress of aircraft.
- Use of heavy and medium lift helicopters to ferry both personnel and materials to and from Green Mountain. Flights would be in support of relocating Green Mountain Lookout and restoring mountain top. A project aviation safety plan would be completed before implementation.
- Two repeaters (Snohomish County SAR and Forest Service) currently housed inside of Green Mountain Lookout would be taken out of service and returned to the responsible agency.
- The catwalk attached to Green Mountain Lookout would be separated from the main structure and stored temporarily at Green Mountain Horse Pasture, where it would be salvaged. The catwalk will not be re-attached to the lookout when relocated to Circle Peak.
- In addition to removing the lookout, restoration of mountain top would include demolishing the concrete foundation and removal of all materials to the extent possible. Disturbed areas would be re-vegetated where feasible.

Connected actions associated with relocation of Green Mountain Lookout to Circle Peak would include the following items:

- Designation of a staging area at the Seed Orchard. This site would be utilized for temporary staging and storing of equipment and materials. Clearing of vegetation may be required at this site to ensure safe ingress and egress of aircraft.
- Construction of a concrete foundation for the placement of Green Mountain Lookout. Minor soil excavation and clearing of vegetation would result from construction of the foundation.
- Use of heavy and medium lift helicopters to ferry both personnel and materials to and from Circle Peak and the Seed Orchard. Flights would be in support of constructing a new foundation for the placement of Green Mountain Lookout. A project aviation safety plan would be completed before implementation.

Project implementation is expected to occur throughout the summer months of 2014. Both Green Mountain and Circle Peak are at high elevation and would not permit project activities for most of the year, excepting July to October when the sites are normally snow free. It may be necessary to store the lookout temporarily at either Green Mountain horse pasture or the Seed Orchard if construction of new foundation is not completed as anticipated. Potential delays for constructing the new foundation as scheduled could be funding or adverse weather conditions if project extends into October or later. If funding or inclement weather become an issue during implementation, priority would be given to removing the lookout from Green Mountain and storing until the project site at Circle Peak is completed.

Possible Alternatives

1. Use of helicopter to airlift lookout intact for placement elsewhere on Forest lands, restore mountain top (Proposed Action)

2. Incinerate lookout, restore mountain top

3. Disassemble lookout by hand and pack out all material, restore mountain top

4. Disassemble lookout by hand, use of helicopter for ingress/egress of personnel and materials, restore mountain top

5. Donate lookout to local museum, to include airlifting structure intact, restore mountain top.

Responsible Official

The Responsible Official is the Mt. Baker-Snoqualmie National Forest Supervisor.

Nature of Decision To Be Made

The Forest Supervisor will make the following decisions based on the interdisciplinary analysis: (1) What method would the Forest Service remove the lookout; (2) what would be the ultimate disposition of the lookout; this depends in part on item (1), the method of removal.

Preliminary Issues

1. Effects of motorized equipment and mechanized transport inside of Wilderness

2. Effects to historic properties

3. Cost to taxpayers.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the agency with the ability to provide the commenter with project updates.

Dated: April 25, 2013.

Mike Schlafmann,

Acting Forest Supervisor.

[FR Doc. 2013–10322 Filed 5–1–13; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the 2013 Current Agricultural Industrial Reports (CAIR).

DATES: Comments on this notice must be received by July 1, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building,1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Current Agricultural Industrial Reports (CAIR).

OMB Control Number: 0535—NEW.

Type of Request: Intent to Seek Approval to Conduct a New Information Collection.

Abstract: The Current Industrial Reports (CIR) program (0607–0476) was conducted by the U.S. Census Bureau previously. It was discontinued on April 30, 2012. The previous approval was for 47 different surveys. These previous industrial reports included a wide range of surveys that included commodities from the following commodity groups: agriculture, aerospace, appliances, pharmaceuticals, textiles and many more. NASS is requesting the authority to reinstate eight data collection instruments previously used by the Census Bureau. Data from these instruments will be used to generate four separate publications. The data from these surveys will supply data users with important information on the utilization of many of the crops, livestock, and poultry produced in the United States. NASS currently collects crop data on acres planted and harvested, production, price and stocks for these crops (grains, oilseeds, cotton, nuts, olives, etc.), along with livestock data on the number of animals and poultry produced, slaughtered, prices, and the amount of meat kept in cold storage. This new data series will provide data users with vital information on how much of these commodities were processed into fuels, cooking oils, flour, fabric, etc. These data are needed to provide a more complete picture of the importance of agriculture to the American population.

In order to develop a complete and comprehensive list of operations, NASS will also conduct an Operation Profile at the beginning of the survey process. This profile will be used to identify operations that do not meet the criteria to be included in this group of surveys also to serve as a training tool. If warranted the profile can be repeated on an annual basis, or used selectively to train new respondents. The training that will be provided is designed to help insure consistent, accurate, and complete data reported on a monthly basis. The remaining eight different data collections will be conducted monthly of all known operations. These surveys will be conducted as a part of the Census of Agriculture and are mandatory as defined under Title 7, Sec. 2204(g).

Publication Number *	Form Number *	Survey Title	Reporting Status	Frequency	Methodology
		Operation Profile	Voluntary	Annual	Universe
M311K	M311H	Animal & Vegetable Fats and Oil (Warehouse Stocks)	Mandatory	Monthly	Universe
	M311L	Fats and Oils	Mandatory	Monthly	Universe
	M311M	Animal & Vegetable Fats and Oil (Consumption & Stocks)	Mandatory	Monthly	Universe
	M311N	Animal & Vegetable Fats and Oil (Production, Consumption, & Stocks)	Mandatory	Monthly	Universe
M311J	M311C	Corn (Wet and Dry Producers of Ethanol)	Mandatory	Monthly	Universe
	M311J	Oilseeds, Beans, and Nuts (Primary Producers)	Mandatory	Monthly	Universe
M313P	M313P	Consumption on the Cotton System and Stocks	Mandatory	Monthly	Universe
MQ311A	MQ311A	Flour Milling Products	Mandatory	Quarterly	Universe

* The Form numbers and publication numbers appear on the surveys previously conducted by the Census Bureau. NASS will change these numbers to follow our naming conventions when the forms are developed by NASS.

Primary users of these data include government and regulatory agencies, business firms, trade associations, and private research and consulting organizations. The USDA World Agricultural Outlook Board (WAOB) uses the data in many of their indexes. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the data in the estimation of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many government agencies, such as the Department of Agriculture, Food and Drug Administration, Bureau of Economic Analysis, and International Trade Administration use the data for industrial analysis, projections, and monitoring import penetration.

NASS proposes to make several changes to the previously approved questionnaires.

M311H—Animal and Vegetable Fats and Oils (Warehouse Stocks)	• Remove tung, caster, vegetable foots, sperm, fish oil, glycerin, tall and fatty acids oils. • Add olive oil.
M311L—Fats and Oils	• Remove inedible tallow and yellow grease direct shipments to livestock feed mixers.
M311M—Animal and Vegetable Fats and Oils (Consumption and Stocks).	• Aggregate consumed in soap, paint, animal feeds, methyl esters, resins, and lubricants to a classification "Total Inedible Use." This will be done for all oils in the questionnaire. • Remove tung, fish, and tall oils.
M311N—Animal and Vegetable Fats and Oils (Production, Consumption, and Stocks).	• Aggregate consumed in soap, paint, animal feeds, methyl esters, resins, and lubricants to a classification "Total Inedible Use." This will be done for all oils in the questionnaire.
M311C—Corn (Wet and Dry Mill Producers of Ethanol)	• Create separate questionnaires for dry mill producers and wet mill producers. • Add feed grade corn oil, industrial grade corn oil, HFCS 42, HFCS 55, glucose & dextrose, and steepwater (liquor) to a wet mill producer questionnaire.
M311J—Oilseeds, Beans, and Nuts (Primary Processors)	• Remove lecithin produced, stocks of beans, and stocks of crude oil. • Remove seeds received at mill, hulls produced, linters produced (first, second cut, and mill run), stocks of crude oil, hulls, linters (first, second cut, and mill run). • Remove flaxseed seeds crushed, stocks of seed, and stocks of crude oil. • Remove nuts crushed, crude oil produced, cake and meal produced, stocks, crude oil, cake and meal stocks for peanuts, tung nut, copra, and caster beans. • Add olives crushed for oil and crude oil produced.
M313P—Cotton, Manmade Fiber, Staple, and Raw Linters (Consumption and Stocks, and Spindle Activity).	• Remove staple length classification for American Upland domestic raw cotton consumed. • Remove consumption of foreign upland cotton cleared by the Customs Bureau.

	• Remove foreign cotton awaiting opening of quota or held in a customs bonded warehouse for export stocks. • Remove nylon staple consumption and stocks. • Remove acrylic staple consumption and stocks. • Remove all spindle numbers and hours of operation.
MQ311A—Flour Milling Products (Production, Stocks, and Capacity)	• Break out ''all wheat including durum'' flour milling questions for the following classes: hard red winter, hard red spring, soft red winter, white, and durum.
M311C—Corn (Wet and Dry Mill Producers of Ethanol)	• Create separate questionnaires for dry mill producers and wet mill producers. • Add feed grade corn oil, industrial grade corn oil, HFCS 42, HFCS 55, glucose & dextrose, and steepwater (liquor) to a wet mill producer questionnaire.

The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Authority: The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10–85 minutes per response. Publicity materials and instruction sheets will account for about 30 minutes of additional burden per respondent, annually. Respondents who refuse to complete the survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: The target population will consist of managers of processing facilities that produce oils and fats from animals, grains, oilseeds, nuts, tree fruits or vegetables; or operations that are involved in the storing, rendering, or marketing of these products. Managers of ethanol plants, cotton gins, and flour mills will also be included in the target population for this group of surveys.

Estimated Number of Respondents: 1,650.

Estimated Total Annual Burden on Respondents: 14,000 hours.

Copies of this information collection and related instructions can be obtained without charge from NASS Clearance Officer, at (202) 720–2248.

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 will have practical utility; (b) 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; (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 are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 12, 2013.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2013–10393 Filed 5–1–13; 8:45 am]

BILLING CODE 3410–20–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Intent To Seek OMB Approval To Collect Information: On-Line Architectural Barriers Act (ABA) Complaint Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: 30-day Notice and request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has requested approval by the Office of Management and Budget (OMB) of a new information collection. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, we are providing opportunity for public comment on this action. This proposed information collection was previously published in the **Federal Register** on December 18, 2012 and allowed 60 days for public comments. Nine comments were received, and the form has been revised in response to these comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Written comments on this notice must be received by June 3, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Address all comments concerning this notice to Lisa Fairhall, Deputy General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lisa Fairhall, Deputy General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004; telephone 202–272–0046; TTY 202–272–0082; or send email to *fairhall@access-board.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: On-line Architectural Barriers Act (ABA) Complaint Form.

OMB Number: 3014–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: New information collection.

Abstract: The Architectural and Transportation Barriers Compliance Board (Access Board) is seeking to make the process for submitting complaints under the Architectural Barriers Act (ABA) easier to use, more efficient, and timely. Complainants will be able to submit a complaint on-line using a standardized web-based complaint form which will prompt them to provide pertinent data necessary for the Access Board to investigate an ABA complaint. You may view the electronic data collection instrument on-line at *http://cts.access-board.gov/formsiq/form.do?formset_id=2&ds=fdd&reload=true*.

Use of the Information

The Access Board enforces the ABA by investigating complaints submitted by members of the public concerning particular buildings or facilities designed, altered, or built, by or on behalf of, or leased by, federal agencies, or financed by federal funds. Complaints can currently be submitted by email, mail or fax. The proposed on-line complaint form will allow complainants to submit ABA complaints electronically and receive notification that their complaint has been received, together with the complaint number for them to use when making inquiries about the status of their complaint. The Access Board is not requiring all complaints to be submitted using the on-line complaint form; the Access Board will continue to accept complaints submitted by email, mail, or fax.

Complainants must submit in writing the name and address of the building or facility and a brief description of each barrier to accessibility they have found at the building or facility. Additional information about the facility, such as when it was built or known sources of federal funding, is helpful but not necessary. Personal information, including the complainant's name, address, phone number and email address is optional and, where provided, is not disclosed without written permission from the complainant. The new on-line complaint form will prompt complainants to provide the information necessary for Access Board staff to initiate an investigation into a complaint. In addition, complainants will be able to attach electronic files containing pictures, drawings, or other relevant documents to the on-line complaint form when it is filed. The Access Board anticipates that use of the on-line complaint form will improve the completeness of the information included in complaints that are submitted for investigation, and this will expedite processing of complaints. In addition, complainants will be able to submit complaints 24 hours a day, seven days a week and receive electronic notification that their complaint has been received.

Estimate of Burden

Public reporting burden for this collection of information is estimated to average less than 30 minutes to complete the on-line complaint form, depending on the number of alleged barriers the complainant identifies.

There is no financial burden on the complainant. Use of the on-line form should relieve much of the burden that the current practice of mailing paper complaints puts on complainants. The Access Board is not requiring all complaints to be submitted using the on-line complaint. The Access Board will continue to accept complaints submitted by email, mail, or fax.

Respondents

Individuals. Approximately 200 individuals file accessibility complaints with the Access Board each year.

Estimated Number of Responses

Assuming all complainants choose to file complaints using the on-line complaint form, approximately 200 individuals would use the on-line complaint form annually.

Frequency of Responses

Complainants need only submit one on-line form for each building or facility at which they have found accessibility barriers, regardless of the number of barriers they found. Most complainants file only one ABA complaint. Complainants will need to submit a separate form for each additional building or facility at which they have found an accessibility barrier.

Estimated Total Annual Burden on Respondents

Approximately 30 minutes per respondent total time is all that will be needed to complete the on-line complaint form, for a total of 100 hours annually.

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 will have practical utility; (b) the accuracy of the estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

David M. Capozzi,

Executive Director.

[FR Doc. 2013–10391 Filed 5–1–13; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2013]

Foreign-Trade Zone 99—Wilmington, Delaware; Application for Expansion of Subzone 99E; Delaware City Refining Company LLC; New Castle County, Delaware

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the State of Delaware (grantee of FTZ 99), through the Delaware Economic Development Office, requesting the expansion of Subzone 99E, located at the facility of the Delaware City Refining Company, LLC in New Castle County, Delaware. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 25, 2013.

The grantee proposes to expand Subzone 99E to include an additional 147 acres and to remove 7.2 acres (new subzone total acreage = 1,940 acres). The subzone is located at 4550 Wrangle Hill Road in New Castle County. No authorization for additional production authority has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 11, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 26, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible *via www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* at (202) 482–1346.

Dated: April 26, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–10407 Filed 5–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2013]

Foreign-Trade Zone (FTZ) 265—Conroe, Texas; Notification of Proposed Production Activity; Bauer Manufacturing Inc.; (Foundation Casings and Tools/Accessories for Pile Drivers and Boring Machinery); Conroe, Texas

The City of Conroe, Texas, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board on behalf of Bauer Manufacturing Inc. (Bauer), located in Conroe, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 18, 2013.

The Bauer facility is located within Site 1 of FTZ 265. The facility is used for the production of foundation casings and tools and accessories for pile drivers and boring machinery. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Bauer from customs duty payments on the foreign status components used in export production. On its domestic sales, Bauer would be able to choose the duty rates during customs entry procedures that apply to foundation casings and tools and accessories for pile drivers and boring machinery (free, 2.9%, 5.0%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: plastic tubes/pipes/hoses, articles of rubber (joining bands, plates, sheets, strips, bands), paper sheets/dials/rolls, articles of steel (shapes; U, H and I beams; sections; sheets; fittings), and air compressors/pumps (duty rates range from free to 5.0%). The request indicates that all foreign steel products subject to an antidumping/countervailing duty (AD/CVD) order will be admitted to the zone in domestic (duty-paid) status (19 CFR § 146.43).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 11, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 25, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–10410 Filed 5–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Preliminary Results of Antidumping Duty Administrative Review; 2011—2012; and Intent to Revoke Order (in Part)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India. The period of review (POR) is April 1, 2011, through March 31, 2012. The review covers one producer and exporter of the subject merchandise, Aquapharm Chemicals Pvt., Ltd. (Aquapharm). We have preliminarily determined that sales of subject merchandise have not been made at prices below normal value by Aquapharm. In addition, we determine that Aquapharm qualifies for revocation and, thus, we preliminarily intend to revoke the antidumping duty order, in part, with respect to HEDP produced and exported by Aquapharm.

DATES: Effective May 2, 2013.

FOR FURTHER INFORMATION CONTACT: Brandon Custard or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–1823 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by this order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid.[1] The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at item numbers 2931.90.9043 and 2811.19.6090.[2] Although the HTS numbers are provided for convenience and customs purposes, the full written scope description, as published in the antidumping order[3] and described in the memorandum entitled ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from India'' (Preliminary Decision Memorandum), remains dispositive.

Methodology

The Department has conducted this review in accordance with Section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. To determine the appropriate comparison method, the Department applied a ''differential pricing'' analysis and has preliminarily determined to use the average-to-average method in making comparisons of export price or constructed export price and normal value for Aquapharm. We have also determined that Aquapharm qualifies for revocation from the order and, thus, we preliminarily intend to revoke the antidumping duty order, in part, with respect to HEDP produced and exported by Aquapharm.[4] For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

[2] We have revised the HTSUS item numbers for the merchandise subject to this order to reflect the current HTSUS schedule available on the International Trade Commission's Web site at *http://www.usitc.gov/tata/hts/bychapter/index.htm.*

[3] *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India and the People's Republic of China: Antidumping Duty Orders,* 74 FR 19197 (April 28, 2009).

[4] *See* 19 CFR 351.222(b)(2).

Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for Aquapharm for the period April 1, 2011, through March 31, 2012.

Disclosure and Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[5] Interested parties may submit case briefs not later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using IA ACCESS.[9]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS.[10] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1).[12] We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Where Aquapharm reported entered value for its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where Aquapharm did not report entered value for its U.S. sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[13]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[14] Therefore, if we continue to calculate a zero margin for Aquapharm in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Conversely, if we calculate an antidumping duty margin for Aquapharm in the final results which is above *de minimis,* we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review as discussed below.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Aquapharm for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Aquapharm will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case no cash deposit will apply to Aquapharm, consistent with our intention to rescind the order with respect to Aquapharm as discussed above; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate established in *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value,* 74 FR 10543, 10544 (March 11, 2009). These requirements,

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.310(c).

[11] *See id.*

[12] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[13] *See id.* at 8103.

[14] *See* section 751(a)(2)(C) of the Act.

when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Notice of Intent To Revoke Order In Part
5. Fair Value Comparisons
   A. Determination of Comparison Method
   B. Results of the Differential Pricing Analysis
6. Product Comparisons
7. Export Price and Constructed Export Price
8. Normal Value
   A. Home Market Viability and Selection of Comparison Market
   B. Level of Trade
   C. Calculation of Normal Value Based on Comparison-Market Prices
9. Currency Conversion
10. Verification

[FR Doc. 2013–10404 Filed 5–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Second Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 9, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) January 2013 remand results.[1] The January 2013 remand results explained how the Department corroborated, to the extent practicable, the adverse facts available (AFA) rate assigned to Essar Steel Limited (Essar) in connection with the State Government of Chhattisgarh Industrial Policy (CIP) in the countervailing duty (CVD) administrative review of certain hot-rolled carbon steel flat products from India for the 2007 review period (the fifth review period or fifth administrative review).[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,*[3] as clarified by *Diamond Sawblades,*[4] the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's *Amended Final Results*[5] and is, therefore, amending the *Amended Final Results.*

DATES: *Effective Date:* April 19, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, C129, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2209.

SUPPLEMENTARY INFORMATION: On May 6, 2009, the Department published its *Final Results.*[6] In the *Final Results,* pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), the Department applied AFA to find that the subprograms under the CIP constituted financial contributions that were specific and that Essar used and benefited from the subprograms under the CIP.[7] The Department attempted to calculate an individual rate for Essar based on the benefit received from the CIP programs but, because it was unable to obtain the necessary information from Essar, it relied on secondary information to determine a rate.[8] Specifically, the Department used the highest above *de minimis* subsidy rate calculated for similar programs (from prior segments of this proceeding) involving grants, the provision of goods for less than adequate remuneration (LTAR), and indirect taxes.[9]

In *Essar I,* the CIT remanded Commerce's AFA determination that Essar benefited from the CIP.[10] The CIT explained that the Department's conclusions in its July 2010 remand redetermination regarding the fourth administrative review in this proceeding, in which the Department found that Essar did not benefit from the CIP based on documents on the fourth administrative review remand record, cast ''grave doubt'' upon the Department's findings that Essar benefited from the CIP during the fifth review period.[11] Thus, the CIT ordered the Department to reopen and place on the administrative record of the fifth administrative review certain documents from the fourth administrative review remand proceeding, and to consider those documents in its reassessment of whether Essar benefited from the CIP.[12]

On October 28, 2010, the Department issued its final results of redetermination pursuant to *Essar I.* The remand redetermination explained that, in accordance with the CIT's order, and under respectful protest, the Department placed certain documents from the fourth administrative review remand proceeding on the record of the fifth administrative review. In light of certain statements by the CIT in *Essar I* and those documents that the CIT ordered the Department to place on the administrative record, the Department reassessed whether Essar benefited from the CIP during the fifth review period

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[1] *See Essar Steel Limited* v. *United States,* Slip Op. 13–48, Court No. 09–197 (Ct. Int'l Trade April 9, 2013) (*Essar V*); Results of Redetermination Pursuant to Court Remand, *Essar Steel Limited v. United States, Court Number 09–00197, Slip Op.* 12–132 (CIT October 15, 2012) filed with the CIT on January 11, 2013 (January 2013 remand results).

[2] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20,923 (May 6, 2009) (*Final Results*), and the accompanying Issues and Decision Memorandum (I&D Memorandum). The administrative review covering the 2007 period is the fifth administrative review of the countervailing duty order on HRCS from India. The administrative review covering the 2006 period is the ''fourth'' administrative review. *See* Final Results, and the accompanying I&D Memorandum at ''Sale of High-Grade Iron Ore for LTAR'' section (referring to the 2006 administrative review as the fourth administrative review).

[3] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[4] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[5] *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision,* 76 FR 7810 (February 11, 2011) (*Amended Final Results*).

[6] *See Final Results.*

[7] *See Final Results,* and the accompanying I&D Memorandum at 3–7 and Comment 2.

[8] *Id.* at 22–26.

[9] *Id.*

[10] *Essar Steel Limited* v. *United States,* 721 F. Supp. 2d 1285, 1301 (CIT 2010) (*Essar I*).

[11] *Id.* at 1300; *see also Final Results of Redetermination Pursuant to Court Remand, United States Steel Corp. v. United States,* CIT No., 08–239 (Department of Commerce July 15, 2010) (*Fourth Administrative Review Redetermination*) at 5–6, 22–23.

[12] *Essar I* at 1301.

and determined that Essar did not.[13] The Department's redetermination resulted in a change to the *Final Results* concerning Essar's net subsidy rate for the CIP from 54.69 percent to zero.[14] Therefore, Essar's total net countervailable rate from the *Final Results,* 76.88 percent, decreased by 54.69 percentage points to a total net countervailable subsidy rate of 22.19 percent.[15] The CIT sustained the Department's remand redetermination on January 25, 2011, in *Essar II.*[16]

On February 11, 2011, the Department published the *Amended Final Results,* amending the total net countervailable subsidy rate for Essar for the period January 1, 2007, through December 31, 2007, and cash deposit rate to 22.19 percent.[17] The Department instructed U.S. Customs and Border Protection (CBP) to collect cash deposits for Essar at the cash deposit rate of 22.19 percent.

The CIT's ruling in *Essar II* was appealed to the CAFC. In *Essar III,* the CAFC reversed the CIT's decision concerning the application of AFA with respect to the CIP and upheld the Department's application of AFA with respect to Essar's participation in the CIP as supported by substantial evidence.[18] Subsequently, the case returned to the CIT, which remanded the case for Commerce to address the outstanding issue of corroboration of the AFA rate the Department had applied to Essar for the CIP in the *Final Results.*[19] The CIT stated that the Department ''explained its methodology for calculating the AFA rate assigned to Essar for its participation in the CIP programs but did not discuss the specific issue of corroboration.'' [20] Therefore, the Court remanded the case for the Department to explain how it corroborated Essar's AFA rate or explain why corroboration is not practicable.[21]

On January 11, 2013, the Department filed with the CIT its remand results explaining how it corroborated, to the extent practicable, the AFA rate it had assigned to Essar in the *Final Results.*[22] On April 9, 2013, the CIT sustained the Department's remand results, holding that the Department ''corroborated Essar's AFA rate to the extent practicable by utilizing calculated benefits from similar programs identified in this CVD proceeding.'' [23]

Amended Final Results

The CIT's April 9, 2013, judgment in *Essar V* sustaining the Department's corroboration of the AFA rate for Essar (54.68 percent *ad valorem*), constitutes a final decision of that court that is not in harmony with the Department's *Amended Final Results.*[24] Because there is now a final CIT decision, the Department amends its *Amended Final Results.* The following total countervailable net subsidy rate exists for the 2007 period of review:

Company	*Ad valorem* net subsidy rate (percent)
Essar Steel Limited	76.88

The cash deposit rate for Essar is also 76.88 percent. The Department will instruct CBP to collect cash deposits for Essar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to assess countervailing duties on entries of the subject merchandise during the 2007 review period from Essar based on the revised assessment rate determined by the Department.

This notice is issued and published in accordance with sections 516A(e), 751(a), and 777(i)(1) of the Act.

Dated: April 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–10413 Filed 5–1–13; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Final Results of Redetermination Pursuant to Court Remand, Essar Steel Limited. v. United States,* Court No., 09–00197 (Department of Commerce October 28, 2010) at 16 (*Essar I Remand Redetermination*).

[14] *Id.* at 16–17.

[15] *Id.* In *Essar I Remand Redetermination,* the Department inadvertently stated that Essar's total net countervailable subsidy rate from the *Final Results,* 76.88 percent, decreased by 54.69 percentage points, to a total net countervailable subsidy rate of 22.19 percent. *See also* the *Amended Final Results.* However, Essar's AFA rate for the CIP in the *Final Results* was 54.68 percent *ad valorem,* not 54.69 percent *ad valorem.* Therefore, the correct AFA rate for Essar is 54.68 percent *ad valorem,* which is the AFA rate from the *Final Results.* The final net subsidy rate for Essar is the same rate as the rate from the *Final Results,* 76.88 *ad valorem.*

[16] *See Essar Steel Limited* v. *United States,* Slip Op. 11–10, Court No. 09–197 (Ct Int'l Trade January 25, 2011) (*Essar II).*

[17] *Amended Final Results,* 76 FR at 7811.

[18] *See Essar Steel Limited* v. *United States,* 678 F.3d 1268, 1278–1279 (CAFC 2012) (*Essar III*).

[19] *Essar Steel Limited* v. *United States,* 880 F. Supp. 2d 1327, 1332 (CIT 2012) (*Essar IV*).

[20] *Essar IV* at 1330.

[21] *Id.* at 1331.

[22] *See* January 2013 remand results.

[23] *See Essar V.*

[24] *See* section 516A of the Act; *Timken,* 893 F.2d at 341; *Diamond Sawblades,* 626 F.3d 1374.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC511

Notice of Availability of a Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the National Marine Fisheries Service, Southwest Fisheries Science Center

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

ACTION: Notice of availability of a Draft Programmatic Environmental Assessment; Request for comments.

SUMMARY: NMFS announces the availability of the ''Draft Programmatic Environmental Assessment (DPEA) for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center (SWFSC).'' Publication of this notice begins the official public comment period for this DPEA. The purpose of the DPEA is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of conducting and funding fisheries and ecosystem research along the U.S. West Coast, throughout the Eastern Tropical Pacific Ocean, and in the Scotia Sea area off Antarctica.

DATES: Comments and information must be received no later than July 1, 2013.

ADDRESSES: Comments on the DPEA should be addressed to Jeremy Rusin, Deputy Director, SWFSC Protected Resources Division, 8901 La Jolla Shores Drive, La Jolla, CA 92037. The mailbox address for providing email comments is *SWFSC.DPEA@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

A copy of the DPEA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://swfsc.noaa.gov/dpea.aspx.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeremy Rusin, SWFSC, NMFS, (858) 546–7101.

SUPPLEMENTARY INFORMATION: The SWFSC is the research arm of NMFS in

the Southwest Region. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species along the U.S. West Coast in the California Current Ecosystem (CCE), throughout the Eastern Tropical Pacific (ETP) Ocean, and in the Scotia Sea area off Antarctica. Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. Primary research activities include: mid-water trawl surveys to support assessments of coastal pelagic species, salmon and groundfish in the CCE; longline surveys for life history studies of sablefish in the CCE and highly migratory species tagging in the CCE and ETP; deep-set buoy surveys for tagging swordfish in the CCE; ecosystem surveys using active acoustic systems, plankton nets, and other oceanographic equipment in the CCE and ETP; and bottom trawl and ecosystem surveys in the Antarctic Research Area.

NMFS has prepared the DPEA under NEPA to evaluate several alternatives for conducting and funding fisheries and ecosystem research activities as the primary federal action. Additionally in the DPEA, NMFS evaluates a related action—also called a ''connected action'' under 40 CFR 1508.25 of the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (42 U.S.C. 4321 *et seq.*)—which is the proposed promulgation of regulations and authorization of the take of marine mammals incidental to the fisheries research under the Marine Mammal Protection Act (MMPA). Additionally, because the proposed research activities occur in areas inhabited by species of marine mammals, birds, sea turtles, and fish listed under the Endangered Species Act (ESA) as threatened or endangered, this DPEA evaluates activities that could result in unintentional takes of ESA-listed marine species.

The following four alternatives are currently evaluated in the DPEA:

- No-Action/Status Quo Alternative—Conduct Federal Fisheries and Ecosystem Research with Scope and Protocols Similar to Past Effort
- Preferred Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Mitigation for MMPA and ESA Compliance
- Modified Research Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Additional Mitigation
- No Research Alternative—No Fieldwork for Federal Fisheries and Ecosystem Research Conducted or Funded by SWFSC

The first three alternatives include a program of fisheries and ecosystem research projects conducted or funded by the SWFSC as the primary federal action. Because this primary action is connected to a secondary federal action (also called a connected action under NEPA), to consider authorizing incidental take of marine mammals under the MMPA, NMFS must identify as part of this evaluation ''(t)he means of effecting the least practicable adverse impact on the species or stock and its habitat.'' (Section 101(a)(5)(A) of the MMPA [16 U.S.C. 1361 *et seq.*]). NMFS must therefore identify and evaluate a reasonable range of mitigation measures to minimize impacts to protected species that occur in SWFSC research areas. These mitigation measures are considered as part of the identified alternatives in order to evaluate their effectiveness to minimize potential adverse environmental impacts. The three action alternatives also include mitigation measures intended to minimize potentially adverse interactions with other protected species that occur within the action area. Protected species include all marine mammals, which are covered under the MMPA, all species listed under the ESA, and bird species protected under the Migratory Bird Treaty Act.

NMFS is also evaluating a second type of no-action alternative that considers no federal funding for field fisheries and ecosystem research activities. This is called the No Research Alternative to distinguish it from the No-Action/Status Quo Alternative. The No-Action/Status Quo Alternative will be used as the baseline to compare all of the other alternatives.

Potential direct and indirect effects on the environment are evaluated under each alternative in the DPEA. The environmental effects on the following resources are considered: physical environment, special resource areas, fish, marine mammals, birds, sea turtles, invertebrates, and the social and economic environment. Cumulative effects of external actions and the contribution of fisheries research activities to the overall cumulative impact on the aforementioned resources is also evaluated in the DPEA for the three main geographic regions in which SWFSC surveys are conducted.

NMFS requests comments on the DPEA for Fisheries Research Conducted and Funded by the National Marine Fisheries Service, Southwest Fisheries Science Center. Please include, with your comments, any supporting data or literature citations that may be informative in substantiating your comment.

Dated: April 25, 2013.

Francisco E. Werner,

Director, Southwest Fisheries Science Center, National Marine Fisheries Service.

[FR Doc. 2013–10441 Filed 5–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC336

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS Southwest Fisheries Science Center (SWFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of SWFSC's request under section 101(a)(5)(A) of the MMPA for the development and implementation of regulations governing the incidental taking of marine mammals. We invite information, suggestions, and comments on SWFSC's application and request.

DATES: Comments and information must be received no later than June 3, 2013.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Laws@noaa.gov.* We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of SWFSC's application may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The SWFSC is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is also available at: *http://swfsc.noaa.gov/dpea.aspx.*

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On April 25, 2013, we received a complete and adequate application from SWFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by SWFSC. The requested regulations would be valid for five years from the date of issuance. The SWFSC plans to conduct fisheries research surveys in the California Current Research Area (off the U.S. west coast), the Eastern Tropical Pacific Research Area, and the Antarctic Research Area (in the Antarctic Scotia Sea). It is possible that marine mammals may interact with fishing gear (*e.g.,* trawl nets, longlines) used in SWFSC's research, resulting in injury, serious injury, or mortality. In addition, the SWFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, SWFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SWFSC is the research arm of NMFS in the Southwest Region. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in three geographic research areas: the California Current Research Area (along the U.S. West Coast), the Eastern Tropical Pacific Research Area (throughout the Eastern Tropical Pacific Ocean), and the Antarctic Research Area (in the Scotia Sea area off Antarctica). The SWFSC provides scientific information to support the Pacific Fishery Management Council and numerous other domestic and international fisheries management organizations.

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the SWFSC designs and executes the studies and funds vessel time. The SWFSC proposes to administer and conduct approximately 14 survey programs over the five-year period. The gear types used fall into several categories: pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, bottom-contact trawls, and other gear. Only pelagic trawl and longline gears are likely to interact with marine mammals. The majority of these surveys also use active acoustic devices.

A more detailed description of the fisheries research conducted by SWFSC may be found in their application, which is available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Information Solicited

Interested persons may submit information, suggestions, and comments concerning SWFSC's request (see **ADDRESSES**). We will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by SWFSC, if appropriate.

Dated: April 29, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–10442 Filed 5–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0083]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Research and Engineering, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for

Research and Engineering announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the information collection on respondents, including through use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 1, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, write to Department of Defense Basic Research Office, ATTN: Dr. Mark Herbst, 4800 Mark Center Drive, Suite 17C–08, Alexandria, VA, or call Dr. Herbst at 571–372–6547.

Title, Associated Form, and OMB Number: Representations to Implement Appropriation Act Provisions on Felony Convictions and Unpaid Federal Tax Liabilities, OMB Control Number 0704–0494.

Needs and Uses: The information collection will enable DoD awarding officials to exercise due diligence and continue to comply with provisions of three Fiscal Year (FY) 2012 appropriations acts that make funds available to DoD Components for obligation, as well as similar provisions that future years' appropriations acts may include. The details of the provisions in the three FY 2012 acts vary somewhat but they generally require DoD to consider suspension or debarment before using appropriated funding to enter into a grant or cooperative agreement with a corporation if the awarding official is aware that the corporation has an unpaid federal tax liability or was convicted of a felony criminal violation within the preceding 24 months. The FY 2012 provisions are in:

- Sections 8124 and 8125 of the Department of Defense Appropriations Act, 2012 (Division A of Pub. L. 112–74, the Consolidated Appropriations Act, 2012);
- Section 514 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012 (Division H of Pub. L. 112–74); and
- Sections 504 and 505 of the Energy and Water Development Appropriations Act, 2012 (Division B of Pub. L. 112–74).

Affected Public: Primary affected public is comprised of Not-For-Profit institutions, but may also include any other entity that submits an application or proposal to a DoD Component that may result in the award of a grant or cooperative agreement using funds subject to a relevant appropriation act provision.

Annual Burden Hours: 1,250 hours.

Number of Respondents: Estimated 2,500.

Responses per Respondent: 6 on average with a wide variation across entities.

Annual Responses: Estimated 15,000.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are entities submitting applications or proposals to Department of Defense Components that may result in the award of grants or cooperative agreements. Each entity under a competitive program will be required to submit representations with its application or proposal to disclose whether it is a corporation that has an outstanding tax liability or has been convicted of a felony criminal violation within the past 24 months. Most applicants for DoD awards submit electronic applications through Grants.gov and the representations would be electronically attached to the applicant's SF 424 (OMB Control Number 4040–0004).

A memorandum to DoD Components from the Assistant Secretary of Defense for Research and Engineering specifies wording of the representations to be used for continuing obligations of FY 2012 appropriations and provides guidance on tailoring of the wording, if needed, to conform to provisions of future appropriations acts. The memorandum may be viewed at the DoD Basic Research Office Web site (*http://www.acq.osd.mil/rd/basic_research/funding/documents/appropriations_act_provisions.pdf*).

An awarding official prior to making a grant or cooperative agreement award will use the information provided by the representations in judging whether the entity recommended to receive the award is eligible to do so—i.e., to decide whether the agency must first consider suspension or debarment of the entity and determine that further action is not necessary to protect the interests of the Government. An entity that fails to submit a required representation therefore will be ineligible to receive a grant or cooperative agreement from the agency.

Dated: April 25, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–10356 Filed 5–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

DATES: Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays DDRA Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the

study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority, which are described in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute and competitive preference priorities are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2013, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, or Vatican City.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address one or both of the following priorities.

For FY 2013, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 662.21(d)(2), we award an additional five points to an application for each competitive preference priority it meets (up to 10 additional points).

These priorities are:

Competitive Preference Priority 1 (5 points): A research project that focuses on any of the 78 languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs), as follows:

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2 (5 points): Research projects that are proposed by applicants using advanced language proficiency in one of the 78 LCTLs listed in *Competitive Preference Priority 1* in their research and who are in the fields of economics, engineering, international development, global education, mathematics, political science, public health, science, or technology.

Invitational Priority: We encourage applications from minority-serving institutions as well as other institutions that promote the participation of students from minority backgrounds in research abroad projects in foreign languages and international studies.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Note: As part of its FY 2013 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan both to utilize their language skills in world areas vital to United States national security and to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields and those planning teaching careers are eligible to apply for this program.

Estimated Available Funds: $3,036,237.

Estimated Range of Fellowship Awards: $15,000 to $60,000.

Estimated Average Size of Fellowship Awards: $35,305.

Estimated Number of Fellowship Awards: 86.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months, beginning October 1, 2013. Students may request funding for a period of no less than 6 months and no more than 12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the Internet at *www.G5.gov* or from Stephanie McKissic, International and Foreign Language Education, U.S. Department of Education, 1990 K Street NW., Room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7589; or, by email: *ddra@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms the applicant must submit, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than 2 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. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). Student applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424), the supplemental information form required by the Department of Education, or the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Applications for grants under this program must be submitted electronically using G5, the Department's grant management system, accessible through the Department's G5 site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies 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.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays DDRA Fellowship Program, CFDA number 84.022A, must be submitted electronically using the G5 system, accessible through the Department's G5 site: *www.G5.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may email an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays DDRA Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major steps are:

(1) IHEs must email the following information to *ddra@ed.gov:* name of university and full name and email address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that they obtain access to G5 well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date in order to facilitate timely submission of their applications;

(2) Students must complete their individual applications and submit them to their IHE's project director using G5;

(3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using G5; and

(4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using G5.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until

the application deadline date to begin the application process.

• The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

• Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including all information typically provided 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. Both IHEs and student applicants 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.

• Student transcripts must be submitted electronically through the G5 system.

• Both the IHE's and the student applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by email. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from G5.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the G5 system is unavailable, we will grant the IHE an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of the G5 system and the IHE has initiated an electronic application for this competition; and

(2)(a) The G5 system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgment of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see Section VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 Application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through G5 because—

• The IHE or a student applicant does not have access to the Internet; or

• The IHE or a student applicant does not have the capacity to upload large documents to G5;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its 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 this statement to: Stephanie McKissic, U.S. Department of Education, 1990 K Street NW., Room 6069, Washington, DC 20006–8521. FAX: (202) 502–7589.

The IHE's 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 an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the 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 84.022A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The IHE 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 the IHE mails its 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 the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the 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 84.022A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00:00 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 an IHE mails or hand delivers its application to the Department—

(1) The IHE 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 the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive this grant notification within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2013, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 662.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priorities, is 110 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (15 points);

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality, and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (5 points); and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record (10 points);

(2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

3. *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).

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable, has a history of unsatisfactory performance, has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable, has not fulfilled the conditions of a prior grant, or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of the GAN. We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of the 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. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays DDRA Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following DDRA measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of Fulbright-Hays DDRA Fellowship recipients at the end of their period of research minus their average score at the beginning of the period.

Efficiency measure: Cost per grantee of increasing language competency by at least one level in at least one area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://iris.ed.gov/iris/pdfs/DDRA_director.pdf, http://iris.ed.gov/iris/pdfs/DDRA_fellows.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Stephanie McKissic, International and Foreign Language Education, U.S. Department of Education, 1990 K Street NW., Room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7589 or by email: *ddra@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

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

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

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

Dated: April 26, 2013.

Martha Kanter,

Under Secretary for Education.

[FR Doc. 2013–10418 Filed 5–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program (SIP)

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice.

Overview Information: Strengthening Institutions Program

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031F.

DATES:

Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Deadline for Intergovernmental Review: July 31, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Strengthening Institutions Program (SIP) provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Note: The FY 2013 SIP grant competition will have two application options for institutions. Under the regular CFDA SIP number, 84.031A, applicants may address two competitive preference priorities. Under the new CFDA number, 84.031F, applicants must address an absolute priority. Applicants may apply to both the 84.031A and 84.031F competitions but can receive an award under only one of the competitions.

Priority:

This notice includes one absolute priority. This priority is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Absolute Priority—Supporting Programs, Practices, or Strategies for which there is Strong or Moderate Evidence of Effectiveness.

Projects that are supported by strong or moderate evidence.

Note 1: The purpose of this priority is to support projects that have demonstrated evidence of effectiveness. As such, in responding to this priority, applicants are encouraged to demonstrate how each of their primary activities (of which there should be no more than three) proposed in the evidence narrative is supported by either strong or moderate evidence. Applicants are also encouraged for each primary activity to identify up to two pieces of evidence that it deems are the best indicators that this activity meets the definition of strong or moderate evidence. Applicants are not limited to proposing three activities in their applications. Rather, of all the proposed activities, applicants should identify which are the primary activities, up to three, and provide evidence for those.

Note 2: Applicants are encouraged to not only identify the evidence-based practices they intend to carry out, but also how those practices will be implemented in a way that will change institutional practices and cultures, and their overall approach to improving results for students. Applicants are also encouraged to discuss how funds received for the proposed evidence-based practices would fit into larger institutional goals and plans.

In addition, applicants should consider how their proposed implementation of practices with an existing evidence base presents new opportunities for evaluation or knowledge-building about these practices that could be used to improve these practices either at their institution or in other contexts.

Note 3: As published, this priority reads: ''Projects that are supported by strong or moderate evidence. A project that is supported by strong evidence (as defined in this notice) will receive more points than a project that is supported by moderate evidence (as defined in this notice).'' The second sentence, however, is inapplicable to the priority when used as an absolute priority. Only projects that are supported by strong evidence or moderate evidence will be considered for funding in this competition.

Definitions: The following definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to the priority in this notice:

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to:

(1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups);

(2) Demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background;

(3) The time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and

(4) Methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Note: The characteristics cited in this definition are examples of variables that might be considered when designing a carefully matched comparison group study. When designing their study, applicants should consider participant characteristics relevant to the specific intervention being implemented.

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Note: The types of random assignment mentioned above are provided as examples. Applicants might want to consider random assignment that is relevant in the higher education context.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented.

Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.[1]

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence:

(1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability;

(2) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or

(3) Correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental study (as defined in this notice) and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study (as defined in this notice) design that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Note: The types of regression discontinuity study designs are provided as examples to help applicants. Applicants might want to consider regression discontinuity study designs that are relevant in the higher education context.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence:

(1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as

[1] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time; a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

defined in this notice) that supports the effectiveness of the practice, strategy, or program; or

(2) One large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse (WWC) evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Program Authority: 20 U.S.C. 1057–1059d (title III, Part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA) Pub. L. 110–315. The HEOA made a number of technical and substantive revisions to SIP. Please note that the regulations for the SIP in 34 CFR part 607 have not been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 607. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant. Five-year Individual Development Grants will be awarded in FY 2013. No Cooperative Arrangement Development Grants will be awarded in FY 2013.

Estimated Available Funds: $10,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Individual Development Grants:

Estimated Range of Awards: $1,000,000-$2,000,000 per year.

Estimated Average Size of Awards: $1,500,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $2,000,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by title III, Part A, of the HEA. To qualify as an eligible institution under any title III, Part A program, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2013 was published in the **Federal Register** on November 14, 2012 (77 FR 67805), and the deadline for submission of the designation of eligibility application was January 30, 2013. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

Relationship between the title III, Part A programs and the Hispanic-Serving Institutions (HSI) programs.

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, Part A program. The title III, Part A programs include the SIP, as well as the Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Asian American and Native American Pacific Islander-Serving Institutions, and Native American-Serving Nontribal Institutions programs. Furthermore, a current HSI program grantee may not give up its HSI grant to receive a grant under SIP or any title III, Part A program as described in 34 CFR 607.2(g)(1).

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (i.e., is not a current grantee under the HSI program) may apply for a FY 2013 grant under all title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant in a fiscal year.

Note 4: The Department will make five-year awards for Individual Development Grants in rank order from the funding slate according to the average score received from a panel of three readers. However, applications within funding range will have the evidence submitted in response to the Absolute Priority reviewed by IES. Those applicants whose evidence is found to not meet the requirements of strong or moderate evidence will not be considered for funding, regardless of where they are located on the slate.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059c(c)(3)(B)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

Other: An IHE, if selected, for a SIP award can only receive funding for one award under this program. If the IHE scores within funding range for both the Absolute Priority competition and the Competitive Preference Priority competition (CFDA number 84.031A), the IHE may only accept one grant award, not both.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following

address: *www.Grants.gov*. If you do not have access to the Internet, please contact Kelley Harris or Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6035, Washington, DC 20006–8513. You may contact the individuals at the following email addresses and telephone numbers:

Kelley.Harris@ed.gov; (202) 219–7083
Nalini.Lamba-Nieves@ed.gov; (202) 502–77562

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contacts listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for Individual Development Grant applications.

You must limit the application narrative (Part III) to no more than 55 pages for the Individual Development Grant application. Applicants should provide information addressing the absolute priority in the section of the application narrative titled, ''*Absolute Priority—Supporting Programs, Practices, or Strategies for which there is Strong or Moderate Evidence of Effectiveness*'' of the grant application package. Applicants are encouraged to demonstrate how each of their primary activities (of which there should be no more than three) proposed in the evidence narrative is supported by either strong or moderate evidence. Applicants are also encouraged for each primary activity to identify up to two pieces of evidence that it deems are the best indicator that this activity meets the definition of strong or moderate evidence. Of the 55-page limit, you may use up to five pages to address the absolute priority. No portion of these five pages can be used as additional pages to respond to the selection criteria. An applicant must include copies or PDFs of all supporting evidence. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information to support the application.

For the purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Text in charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424-cover sheet); the Supplemental Information for SF 424 Form required by the Department of Education; Part II, the Budget Information-Non-Construction Programs Form (ED 524); Section A—Budget Summary—U.S. Department of Education Funds; Section B—Budget Summary—Non-Federal Funds; and Section C—Budget Narrative; Part IV, the assurances and certifications; the one-page program abstract; the response to the Absolute Priority in the section entitled, ''*Absolute Priority—Supporting Programs, Practices, or Strategies for which there is Strong or Moderate Evidence of Effectiveness;*'' resumes; bibliography; or letters of support. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for the purpose of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 31, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* (a) General. We specify unallowable costs in 34 CFR 607.10(c). We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

(b) Applicability of Executive Order 13202. Applicants that apply for construction funds under the title III, Part A, HEA programs, must comply with Executive Order 13202, signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or

remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

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 two to five 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 Strengthening Institutions Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Strengthening Institutions Program (CFDA number 84.031F) 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 this competition 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 84.031, not 84.031F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- 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: Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6024, Washington, DC 20006–8513. FAX: (202) 502–7861.

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 84.031F), 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 84.031F), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22(a) through (g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses. The complete language of the selection criteria is in the application package for this competition.

(a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).

(b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will score the application, except for the evidence portion. A rank order funding slate will be made from this review, based on the selection criteria. In applying the absolute priority, the Department will first develop a rank order slate of all applicants and determine which applicants will be considered for funding based on their reviewed scores. From there, applications within the funding range will have the quality of their evidence evaluated by the Institute for Education Sciences (IES) to determine whether it meets the definition of strong or moderate evidence. Applicants that are found to have insufficient evidence will not be considered for funding, regardless of where they appear in the slate. The Department will continue reviewing the evidence of applications within the funding range until it has a sufficient number of applicants that are highly rated and meet the evidence test and the Department has used all funding available for this competition. Applicants whose scores fall below this group will not have their evidence reviewed. Awards will be made in rank order according to the average score received from the peer review as well as evidence and study standard evaluations. Applicants whose evidence does not meet the requirements for strong or moderate evidence as set forth in the absolute priority will not receive funding, regardless of their average score received from the peer review.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per full time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2010–2011 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for Individual Development grants to applicants that have the lowest endowment values per FTE enrolled student.

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 (34 CFR 607.24(c)(2)); 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 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Institutions Program:

a. The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at four-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at two-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year SIP institutions graduating within six years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year SIP institutions graduating within three years of enrollment.

Note: While these measures are used by the Department to assess the effectiveness of the program, each grantee should develop project-specific, measureable objectives that can be used to assess whether the grantee is making substantial progress.

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 Contacts

FOR FURTHER INFORMATION CONTACT: Kelley Harris, or Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6035, Washington, DC 20006–8513. You may contact these individuals at the following email addresses and telephone numbers:

Kelley.Harris@ed.gov (202) 219–7083.

Nalini.Lamba-Nieves@ed.gov (202) 502–7562.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: April 26, 2013.

Martha Kanter,

Under Secretary for Education.

[FR Doc. 2013–10420 Filed 5–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program (SIP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Strengthening Institutions Program.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031A.

Dates:

Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Deadline for Intergovernmental Review: July 31, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Strengthening Institutions Program (SIP) provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Note: The FY 2013 SIP grant competition will have two application options for institutions. Under the regular CFDA SIP number, 84.031A, applicants may address two competitive preference priorities. Under the new CFDA number, 84.031F, applicants must address an absolute priority. Applicants may apply to both the 84.031A and 84.031F competitions but can receive an award under only one of the competitions.

Priorities:

This notice includes two competitive preference priorities. These priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference 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 competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional four points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Success: College Completion (2 points).

Projects that are designed to address the following priority area:

Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Note: In responding to this priority, applicants are encouraged to discuss how all strategies they propose to carry out would improve postsecondary success.

Competitive Preference Priority 2—Improving Productivity (2 points).

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified in Competitive Preference Priority 2 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant to this program. Accordingly, applicants should consider responding to the competitive preference priority in a way that improves productivity in a relevant higher education context.

Definitions: The following definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to the priorities in this notice:

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level, or who are not on track to becoming college- or career-ready by graduation, who have left

school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1057–1059d (title III, Part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA) Public Law 110–315. The HEOA made a number of technical and substantive revisions to SIP. Please note that the regulations for the SIP in 34 CFR part 607 have not been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 607. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants will be awarded in FY 2013. No Cooperative Arrangement Development Grants will be awarded in FY 2013.

Estimated Available Funds: $9,787,998.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Individual Development Grants:

Estimated Range of Awards: $300,000–$450,000 per year.

Estimated Average Size of Awards: $400,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by title III, Part A, of the HEA. To qualify as an eligible institution under any title III, Part A program, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2013 was published in the **Federal Register** on November 14, 2012, (77 FR 67805), and the deadline for submission of the designation of eligibility application was January 30, 2013. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

Relationship between the HEA title III, Part A programs and the Hispanic-Serving Institutions (HSI) programs.

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, Part A program. The title III, Part A programs include the SIP, as well as the Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Asian American and Native American Pacific Islander-Serving Institutions, and Native American-Serving Nontribal Institutions programs. Furthermore, a current HSI program grantee may not give up its HSI grant to receive a grant under SIP or any title III, Part A program as described in 34 CFR 607.2(g)(1).

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (i.e., is not a current grantee under the HSI program) may apply for a FY 2013 grant under all title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant.

Note 4: The Department will make five-year awards for individual development grants in rank order from the funding slate according to the average score received from a panel of three readers plus any competitive preference points awarded.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059c(c)(3)(B)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: *www.Grants.gov.* If you do not have access to the Internet, please contact Kelley Harris or Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6035, Washington, DC 20006–8513. You may contact the individuals at the following email addresses and telephone numbers:

Kelley.Harris@ed.gov; mailto: (202) 219–7083

Nalini.Lamba-Nieves; mailto: (202) 502–7562

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the program contacts listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the two competitive preference priorities that reviewers use to evaluate your application. We have established mandatory page limits for the Individual Development Grant applications. If you are addressing either or both competitive preference priorities you must limit the application narrative (Part III) to no more than 55 pages for the Individual Development Grant application. Please include a separate heading when responding to the competitive preference priorities. You may only use the additional five pages to address the competitive preference priorities. The additional five pages are not for an extended response to the selection criteria. If you are not addressing the competitive preference priorities you must limit your application narrative to no more than 50 pages for the Individual Development Grant.

For the purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Text in charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424-cover sheet); the Supplemental Information for SF 424 Form required by the Department of Education; Part II, the Budget Information-Non-Construction Programs Form (ED 524); Section A—Budget Summary—U.S. Department of Education Funds; Section B—Budget Summary—Non-Federal Funds; and Section C—Budget Narrative; Part IV, the assurances and certifications; the one-page program abstract; resumes; bibliography; or letters of support. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria and competitive preference priorities. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for the purpose of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 2, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 31, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* (a) General. We specify unallowable costs in 34 CFR 607.10(c). We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

(b) Applicability of Executive Order 13202. Applicants that apply for construction funds under the title III, Part A, HEA programs, must comply with Executive Order 13202, signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

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 two to five 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 Strengthening Institutions Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Strengthening Institutions Program (CFDA number 84.031A) 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 this competition 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 84.031, not 84.031A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- 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: Kelley Harris, U.S. Department of Education, 1990 K Street NW., Room 6035, Washington, DC 20006–8513. FAX: (202) 502–7861.

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 84.031A) 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 84.031A) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22, (a) through (g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses. The complete language of the selection criteria is in the application package for this competition.

(a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).

(b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Awards will be made in rank order according to the average score received from an evaluation performed by a panel of three non-Federal reviewers. A rank order funding slate will be made that includes scores for competitive preference priorities 1 and 2.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per full time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that

has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2010–2011 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for that have the lowest endowment values per FTE enrolled student.

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 (34 CFR 607.24(c)(2)); 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 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Institutions Program:

a. The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at four-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at two-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year SIP institutions graduating within six years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year SIP institutions graduating within three years of enrollment.

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 Contacts

FOR FURTHER INFORMATION CONTACT: Kelley Harris, or Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6035, Washington, DC 20006–8513. You may contact these individuals at the following email addresses and telephone numbers:

Kelley.Harris@ed.gov; mailto: (202) 219–7083

Nalini.Lamba-Nieves; mailto: (202) 502–7562

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: April 26, 2013.

Martha Kanter,

Under Secretary for Education.

[FR Doc. 2013–10417 Filed 5–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Notice of open and closed meeting sessions.

SUMMARY: This notice sets forth the schedule and proposed agenda for the upcoming meeting of the National Assessment Governing Board (Board) and also describes the specific functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This notice is issued to provide members of the general public with an opportunity to attend and/or provide comments. Individuals who will need special accommodations in order to attend the meeting (e.g. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than May 6, 2013. We will attempt to meet requests after this date but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 16–May 18, 2013.

Times

May 16: Committee Meetings

Assessment Development Committee: Closed Session: 8:00 a.m.–1:45 p.m.

Ad Hoc Committee on NAEP Background Information: 2:00 p.m.–4:00 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:30 p.m.; Closed Session: 5:30 p.m.–6:30 p.m.

May 17: Full Board and Committee Meetings

Full Board: Open Session: 8:30 a.m.–9:45 a.m.; Closed Session: 12:45 p.m.–1:45 p.m.; Open Session: 2:00 p.m.–5:15 p.m.

Committee Meetings

Assessment Development Committee (ADC): Closed Session: 10:00 a.m.–11:00 a.m.; Open Session: 11:00 a.m.–12:30 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 10:00 a.m.–12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:00 a.m.–12:30 p.m.

May 18: Full Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m.–8:15 a.m.

Full Board: Open Session: 8:30 a.m.–11:00 a.m.

Location: The Omni Los Angeles Hotel, 251 South Olive Street, Los Angeles, CA 90012.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (Board) is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On May 16, 2013, the Assessment Development Committee will meet in closed session from 8:00 a.m. to 1:45 p.m. to review secure NAEP test materials for Science Interactive Computer Tasks (ICTs) at grades 4, 8, and 12 for the 2014 pilot test, in preparation for the 2015 NAEP Science assessment. The review of secure ICTs for grades 4, 8, and 12 must be conducted in closed session because the ADC members will be provided with secure items and materials which are not yet available for release to the general public. Premature disclosure of the secure test items and materials would compromise the integrity and substantially impede implementation of the secure NAEP assessments and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code.

On May 16, 2013, the Ad Hoc Committee on NAEP Background Information will meet in open session from 2:00 p.m. to 4:00 p.m. Thereafter, the Executive Committee will convene in open session from 4:30 p.m. to 5:30 p.m. and in closed session from 5:30 p.m. to 6:30 p.m. During the closed session, the Executive Committee will receive and discuss costs for specific activities under individual current contracts, and independent government cost estimates from the National Center for Education Statistics (NCES) staff on various options for proposed item development, data collection, scoring and analysis, and reporting of National Assessment of Educational Progress (NAEP) results for 2013–2017, and their implications on future NAEP activities. The costs of specific activities budgeted under current contracts would disclose financial information that is proprietary, protected under Section 552b(c)(4) of Title 5 U.S.C. The discussion of independent government cost estimates for the NAEP 2013–2017 contracts is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments available at *www.nagb.org/policies.html.* This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing contractors attending an unfair advantage in procurement and contract negotiations for NAEP. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On May 17, 2013, the full Board will meet in open session from 8:30 a.m. to 9:45 a.m., followed by a closed session from 12:45 p.m. to 1:45 p.m., and an open session from 2:00 p.m. to 5:15 p.m.

On May 17, 2013, from 8:30 a.m. to 9:45 a.m., the Board will review and approve the May 17–18, 2013 Board meeting agenda and meeting minutes from the March 2012 Quarterly Board meeting. Thereafter, the Chairman will open the meeting with welcome remarks from California Board member Shannon Garrison. The Superintendent of Los Angeles Unified School District will then address the Board. These sessions will be followed by a report from the Executive Director of the Governing Board, and updates from the Commissioner of the National Center for Education Statistics (NCES) and the Director of the Institute of Education Sciences (IES). Thereafter, the Board will recess for Committee meetings from 10:00 a.m. to 12:30 p.m. The Reporting and Dissemination Committee and the Committee on Standards, Design and Methodology will meet in open sessions from 10:00 a.m. to 12:30 p.m. The Assessment Development Committee (ADC) will meet first in closed session from 10:00 a.m. to 11:00 a.m. for ADC members to receive and discuss embargoed data from the 2013

Technological and Engineering Literacy (TEL) pilot test at 8th grade, in preparation from the 2014 operational TEL assessment. The review of data from the pilot test must be conducted in closed session because the ADC members will be provided with secure items and materials which are not yet available for release to the general public. Premature disclosure of the secure test items and materials would compromise the integrity and substantially impede implementation of the secure NAEP assessments and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code. Thereafter, the ADC Committee will meet in open session from 11:00 a.m. to 12:30 p.m.

Following the open session, the Board will meet in a closed session from 12:45 p.m. to 1:45 p.m. to receive a briefing on the NAEP 2012 Long-Term Trend Report. The Board will receive an embargoed briefing on preliminary results which will include secure test items, embargoed assessment data, and results that cannot be discussed in an open meeting prior to their official release. Premature disclosure of these results would significantly impede implementation of the NAEP assessment program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

After the closed session briefing, the Board will meet in open session from 2:00 p.m. to 5:15 p.m. From 2:00 p.m.–3:00 p.m. the Board will receive a briefing on English Language Proficiency Testing. From 3:00 p.m. to 4:00 p.m., the Board will have policy discussions on the Draft Policy Statement on the Conduct and Reporting of NAEP and on Interpreting NAEP Proficient Using Preparedness Research Findings. From 4:15 p.m. to 5:15 p.m., the Board will discuss proposals on Making a Difference. The May 17, 2013 Board meeting is scheduled to adjourn at 5:15 p.m.

On May 18, 2013, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to discuss the status of potential candidates for Board terms beginning October 1, 2013, followed by discussions on the 2014 nominations cycle. The Committee's discussions on Board nominations pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code.

On May 18, 2013, from 8:30 a.m. to 9:30 a.m. the full Board will have an open discussion on matters of interest to the Board. Following these discussions, from 9:45 a.m. to 11:00 a.m., the Board will receive reports from the standing Committees and take action on Committee recommendations. The May 18, 2013 meeting is scheduled to adjourn at 11:00 a.m.

A verbatim transcript of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at (202) 512–0000. Note: 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 on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: April 29, 2013.

Mary Crovo,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2013–10411 Filed 5–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–029]

Petition for Waiver of GE Appliances From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure and Grant of Interim Waiver

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of a petition for waiver from GE Appliances (GE) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. GE asks that it be permitted to use an alternate test procedure to address the difficulties in testing shared dual compressor systems according to the currently applicable DOE test procedure. DOE solicits comments, data, and information concerning GE's petition and the suggested alternate test procedure. Today's notice also grants GE with an interim waiver from the electric refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice. The waiver request pertains to the basic models set forth in GE's petition that incorporate shared dual compressor systems.

DATES: DOE will accept comments, data, and information with respect to the GE Petition until June 3, 2013.

ADDRESSES: You may submit comments, identified by case number ''RF–029,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–029] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950

L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975, as amended (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR part 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure

On February 28, 2013, GE submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. GE is seeking a waiver because it is developing new refrigerator-freezers that incorporate a dual-compressor design that is not contemplated under DOE's test procedure. In its petition, GE seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 for the company's shared dual-compressor system products. In its petition, GE has set forth an alternate test procedure and notes in support of its petition that DOE has already granted Sub-Zero a similar waiver pertaining to the use of shared dual compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE has also granted an interim waiver to LG. See 77 FR 44603 (July 30, 2012). The reasons for which DOE granted Sub-Zero's waiver request and LG's interim waiver request apply as well to the GE basic models that are the subject of this waiver request: These models all use a shared compressor-based system with refrigerant-Flow controlled by a 3-way valve and do not have the independent, sealed systems that the DOE test procedure is designed to address. DOE has reviewed the alternate procedure and believes that it will allow for the accurate measurement of the energy use of these products, while alleviating the testing problems associated with GE's implementation of a dual compressor system.

GE also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(g).

For the reasons discussed above, DOE has determined that use of the currently required DOE test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. Therefore, it appears likely that GE's petition for waiver will be granted. For these same reasons, DOE has also determined that it is desirable for public policy reasons to grant GE immediate relief pending a determination of the petition for waiver. DOE grants GE's application for interim waiver from testing of its refrigerator-freezer product line containing dual compressors.

Therefore, *it is ordered that:*

The application for interim waiver filed by GE is hereby granted for GE's refrigerator-freezer product lines that incorporate dual compressors subject to the following specifications and conditions below. GE shall be required to test and rate its refrigerator-freezer product line containing dual compressors according to the alternate test procedure as set forth in section III, ''Alternate test procedure.''

The interim waiver applies to the following basic models:

ZIC30GNDII
ZIK30GNDII

DOE makes decisions on waivers and interim waivers for only those models

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

specifically set out in the petition, not future models that may be manufactured by the petitioner. GE may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for GE in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, GE shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the GE products listed above only, include the following steps:

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

—ET is the test cycle energy (kWh/day);
—1440 = number of minutes in a day
—EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
—T1 is the length of time for EPI (minutes);
—D is the total number of compartments with distinct defrost systems;
—i is the variable that can equal to 1,2 or more that identifies the compartment with distinct defrost system;
—EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
—T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
—12 = conversion factor to adjust for a 50% run-time of the compressor in hours/day
—CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR Part 430, Subpart B, Appendix A1 clause 5.2.1.2. CTi for compartment I with variable defrost system is calculated as per 10 CFR part 430 subpart B, Appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting. Steady State for EP1: The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees 1 F (0.6 [degrees 1 C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees 1 F (0.6 [degrees 1 C) of the EPI test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

* * * * *

IV. Summary and Request for Comments

Through today's notice, DOE grants GE an interim waiver from the specified portions of the test procedure applicable to GE's line of refrigerator-freezers with shared dual compressors and announces receipt of GE's petition for waiver from those same portions of the test procedure. DOE publishes GE's petition for waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure to determine the energy consumption of GE's specified refrigerator-freezers with shared dual compressors. GE is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Earl F. Jones, Senior Counsel, GE Appliances, Appliance Park 2–225, Louisville, KY 40225. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file

format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

U.S. Department of Energy

Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix A1—Uniform Test Method for Measuring the Energy Consumption of Refrigerator-freezers

Case No.

Non-Confidential Version.

February 28, 2013.

Submitted by:

Earl F. Jones, Senior Counsel, GE Appliances, Appliance Park 2–225, Louisville, KY 40225, *earl.jones@ge.com*, 502–452–3164 (voice), 502–452–0395 (fax).

U.S. Department of Energy Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix A1—Uniform Test Method for Measuring Refrigerator-Freezers

I. Introduction

GE Appliances, an operating division of General Electric Co., (''GE'') is a leading manufacturer and marketer of household appliances, including, as relevant to this proceeding, refrigerators, files this Petition for Waiver and Application for Interim Waiver (collectively, ''Petition''). GE requests that the Assistant Secretary grant it a waiver from certain parts of the test procedure promulgated by the U.S. Department of Energy (''DOE'' or ''the Department'') for determining refrigerator-freezer energy consumption and allow GE to test its new refrigerator-freezer model pursuant to the modified procedure submitted herewith. This request is filed pursuant to 10 CFR 430.27.

The Department's regulations provide that the Assistant Secretary will grant a Petition upon ''determin[ation] that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.'' 10 CFR 430.27(l). GE requests that the Assistant Secretary grant this Petition on both grounds.

First, the refrigerator energy test procedure set forth in 10 CFR part 430, subpart B, Appendix A1 does not allow the energy used by GE's new refrigerator to be accurately calculated. The new refrigerator contains two compressors, each of which contributes to the cooling of the separate fresh-food and freezer compartments. Since the test procedure assumes that refrigerators have only one compressor it does not provide a method for calculating energy consumption of dual-compressor systems. Thus, GE's new model cannot be tested per the procedure.

Second, if GE were to test its new dual-compressor refrigerator per the test procedure the results of the energy test so conducted would not accurately measure the energy used by the new model.

II. Background

GE has designed and has plans to market a new refrigerator. In order to be assured that it is correctly calculating the energy consumption of the product, that the product meets the minimum energy requirements for its product class and is properly labeled, GE seeks the Department's expeditious concurrence to its proposed amendment to the refrigerator test procedure to provide for testing of dual compressor models.

DOE granted Sub-Zero's waiver petition [2] for refrigerators equipped with dual compressors acknowledging that the existing test procedure cannot properly measure the energy usage of refrigerators with dual systems. Thereafter, the Department granted LG Electronics USA, Inc.'s interim waiver application for its dual-compressor product.[3]

III. GE's Proposed Test Procedure

In light of the above and since GE proposes to test its product in accordance with the test procedure that DOE has already approved for use by Sub-Zero and LG, the Department should grant GE's Petition and permit it to use the Sub-Zero-approved test procedure, which is set forth in Attachment 1 hereto.

The reasons DOE granted Sub-Zero's waiver request apply as well to GE's product: GE's refrigerator also has a shared compressor system with refrigerant-flow controlled by a 3-way valve. It does not have the independent, sealed systems assumed by the DOE test procedure. As a result, it cannot be tested using the DOE test procedure. Moreover, using the test procedure would yield test results so unrepresentative as to provide materially inaccurate comparative data.

The waiver should continue in effect until DOE amends the test procedure to accommodate such products. GE also requests that the Department grant an interim waiver to test and rate the models listed on Attachment 2. We would be pleased to discuss this request with DOE and provide further information as needed.

GE requests expedited treatment of the Petition and Application.

I hereby certify that all manufacturers of domestically marketed units of the same product type have been notified of this Petition and Application, list of which is found in Attachment 3, hereto.

Respectfully submitted,

Earl F. Jones,

Senior Counsel and Authorized Representative of GE Appliances.

Attachment 1

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

—ET is the test cycle energy (kWh/day);

—1440 = number of minutes in a day

—EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);

—T1 is the length of time for EPI (minutes);

—D is the total number of compartments with distinct defrost systems;

—i is the variable that can equal to 1,2 or more that identifies the compartment with distinct defrost system;

—$EP2_i$ is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);

—$T2_i$ is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.

—12 = conversion factor to adjust for a 50% run-time of the compressor in hours/day

—CT_i is the compressor on time between defrosts for only compartment i. CT_i for compartment i with long time automatic defrost system is calculated as per 10 CFR Part 430, Subpart B, Appendix A1 clause 5.2.1.2. CT_i for compartment I with variable defrost system is calculated as per 10 CFR part 430 subpart B, Appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting. Steady State for EP1: The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees 1 F (0.6 [degrees 1 C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are

[2] Sub-Zero, 77 FR 5784, Feb. 6, 2012.

[3] LG, 77 FR 44603, July 30, 2012.

used for test period 1, each segment must comply with above requirement.

Steady State for $EP2_i$:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees 1 F (0.6 [degrees 1 C) of the EPI test period temperature average for each compartment.

Test Period for $EP2_i$, $T2_i$:

$EP2_i$ includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow $T2_i$ to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and $EP2_i$.

Test Measurement Frequency

Measurements shall be taken at regular interval not exceeding 1 minute.

* * * * *

Attachment 2

ZIC30GNDII
ZIK30GNDII

[FR Doc. 2013–10395 Filed 5–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–028]

Notice of Petition for Waiver of GE Appliances From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of a petition for waiver and application for interim waiver (hereafter, ''petition'') from GE Appliances (GE) regarding specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential electric refrigerators and refrigerator-freezers. In its petition, GE provides an alternate test procedure. DOE solicits comments, data, and information concerning GE's petition and the suggested alternate test procedure. Today's notice also grants GE an interim waiver from the residential electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the GE Petition until June 3, 2013.

ADDRESSES: You may submit comments, identified by case number ''RF–028,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–028] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR part 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On February 15, 2013, GE submitted via electronic mail an undated petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. GE is designing new refrigerator-freezers with separate fresh-food and freezer evaporators and a compressor that cycles in a non-uniform pattern. In its petition, GE seeks a waiver from the test procedure for refrigerator-freezers provided in appendix A1 because that test procedure does not provide a means to measure the energy use of products with multiple defrost cycles. The petition further states that, because of these models' non-uniform compressor cycles, they cannot attain the 0.5 °F temperature differential between compressor cycles that is required in order to identify regular compressor operation using the method specified for the second part of the Appendix A test. Therefore, GE has asked to use an alternate test procedure.

GE also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that GE's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship GE might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely GE's petition will be granted, and that it is desirable for public policy reasons to grant GE relief pending a determination on the petition. DOE has determined that it is desirable to have similar basic models tested in a consistent manner.

For the reasons stated above, DOE grants GE's application for interim waiver from testing of its refrigerator-freezer product line with non-uniform compressor cycling. Therefore, *it is ordered that:*

The application for interim waiver filed by GE is hereby granted for the specified GE refrigerator-freezer basic models with non-uniform compressor cycling, subject to the specifications and conditions below. GE shall be required to test or rate the specified refrigerator-freezer products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

CYE23T*D****
PYE23P*D****
PYE23K*D****
PWE23K*D****

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. GE may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that a grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for GE in a subsequent Decision and Order.

In its petition, GE states that, because its new refrigerator-freezer models contain a separate fresh food evaporator, tests using the DOE test procedure for refrigerator-freezers at 10 CFR part 430, subpart B, appendix A1 (''Appendix A1'') would result in measurements of energy use that are not representative of these models' actual energy use. DOE has previously issued test procedure waivers for models with this feature, and subsequently incorporated the test method authorized for use through these waivers in Appendix A, which will be required for use beginning on September 15, 2014. 77 FR 3574 (Jan. 25, 2012) While the test method for systems with multiple defrost cycle types in section 4.2.4 of Appendix A appears to be more appropriate for these models than the test procedure of Appendix A1 based upon GE's description, the petition also states that, because of their non-uniform compressor cycles, these models cannot attain the 0.5 °F temperature differential between compressor cycles that is required in order to identify regular compressor operation using the method specified for the second part of the Appendix A test (*see* section 4.2.1.1 of 10 CFR part 430, subpart B, appendix A).

As an alternative, GE proposes to use a test that is designed specifically for models with separate fresh food and freezer evaporators and with non-uniform compressor cycles. The proposed test would be based upon the current DOE test procedure for refrigerator-freezers in Appendix A1, except that it would use a modified version of the test period specified in section 4 and the energy use calculation for products with long-time or variable defrost control and multiple defrost cycle types in section 5.2.1.5 of Appendix A. As described by GE, Part 2 of the test ($T2_i$ in the formula) would be defined as the series of cycles prior to and following the defrost period, identified as the A_{1-j} and B_{1-k} cycles, respectively. These cycles would be used to determine when the 0.5 °F temperature differential has been achieved.

As an example, if the average temperatures for Part 1 of the test are 37.8 °F and 0.2 °F in the fresh food and freezer compartments, respectively, and the temperatures for the Cycle B series of Part 2 of the test (*i.e.,* Cycles B_{I-k}), are as follows:

	Fresh food	Freezer
B1	42.1 °F	4.3 °F
B1–2	40.2 °F	2.1 °F
B1–3	38.0 °F	0.0 °F

then the average temperatures for the Cycle B series are 38.0 °F and 0.0 °F, which are within the 0.5 °F (0.3 °C)

requirement. In this example, Part 2 ends after cycle B3.

During the period of the interim waiver granted in this notice, GE shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the GE products listed above only, include:

1. In section 4, test period, the following:

4. Test Period

* * * * *

4.2.1 Long-time Automatic Defrost with Nonuniform Compressor Cycling and Multiple Defrost Cycle Types. The two-part test described in this section shall be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery. The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation. The second part of the method will be conducted separately for each distinct defrost cycle type.

4.2.1.1 Measurement Frequency. Measurements shall be taken at intervals not exceeding one minute. Steady state conditions as described in section 2.9 shall be verified using measurements taken at intervals not exceeding one minute.

4.2.1.2 The test period for the first part of the test shall start at the start of a compressor ''on'' cycle after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. At the end of the test period both compartment temperatures (fresh food and freezer) shall be within 0.5 °F (0.3 °C) of their measurements at the start of the test period. For this comparison, these compartment temperatures shall be measured at the start and end of the test period rather than averaged for the entire test period, but otherwise shall be defined as described in sections 5.1.3 and 5.1.4. If 24 hours pass before the compartment temperatures meet this requirement, the test period shall comprise a whole number of compressor cycles lasting at least 24 hours.

4.2.1.3 The second part of the test starts at the termination of the first part of the test. The average compartment temperatures as defined in sections 5.1.3 and 5.1.4 for a whole number of compressor cycles occurring after the start of the test period and before the time that the defrost heater is energized must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. The test period for the second part of the test ends at the start of a compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions after the defrost. The average compartment temperatures as defined in sections 5.1.3 and 5.1.4 for a whole number of compressor cycles occurring after temperature recovery and before the end of the test period must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1.

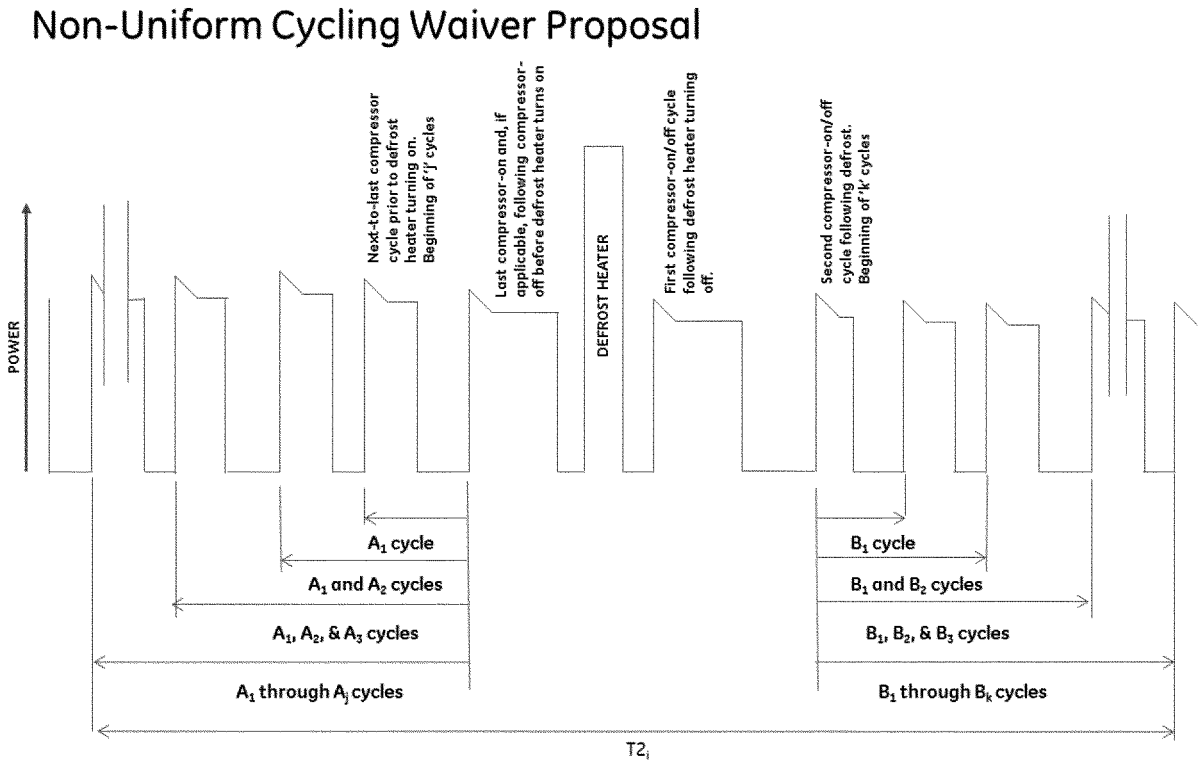


Figure 1 Note: The average temperatures of the compartments for compressor cycles A_1 through A_j shall be within 0.5 ˚F (0.3 ˚C) of their temperature averages for the first part of the test. Likewise, the average temperatures of the compartments for compressor cycles B_1 through B_k shall be within 0.5 ˚F (0.3 ˚C) of their temperature averages for the first part of the test.

2. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the

default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of GE's petition for waiver from certain parts of the test procedure that apply to refrigerator-freezers and grants an interim waiver to GE. DOE is publishing GE's petition for waiver. The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models with non-uniform compressor cycling.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. 10 CFR 430.27(d). The contact information for the petitioner is: Earl F. Jones, Senior Counsel, GE Appliances, Appliance Park 2–225, Louisville, KY 40225. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

U.S. Department of Energy

Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix A1-Uniform Test Method for Measuring the Energy Consumption of Refrigerator-freezers

Case No.

Non-Confidential Version

Submitted by:

Earl F. Jones
Senior Counsel
GE Appliances
Appliance Park 2–225
Louisville, KY 40225
earl.jones@ge.com
502–452–3164 (voice)
502–452–0395 (fax)

U.S. Department of Energy Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix A1—Uniform Test Method for Measuring Refrigerator-Freezers

I. Introduction

GE Appliances, an operating division of General Electric Co., (''GE'') is a leading manufacturer and marketer of household appliances, including, as relevant to this proceeding, refrigerators, files this Petition for Waiver and Application for Interim Waiver (collectively, ''Petition''). GE requests that the Assistant Secretary grant it a waiver from certain parts of the test procedure promulgated by the U.S. Department of Energy (''DOE'' or ''the Department'') for determining refrigerator-freezer energy consumption and allow GE to test its new refrigerator-freezer model pursuant to the modified procedure submitted herewith. This request is filed pursuant to 10 C.F.R. § 430.27.

The Department's regulations provide that the Assistant Secretary will grant a Petition upon ''determin[ation] that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.'' 10 C.F.R. § 430.27(l).

GE requests that the Assistant Secretary grant this Application for Interim Waiver (Application) and Petition for Waiver (Petition) on the grounds that the refrigerator energy test procedure, 10CFR430, Subpart B, Appendix A1, does not allow the energy used by GE's new refrigerator to be accurately calculated.

II. Background

GE has designed and plans to market a new refrigerator. The new models, which are listed in Attachment 1, are manufactured in Louisville, KY, will replace products that were previously manufactured in Mexico. They are part of GE's $1 billion investment in GE Appliances that will revitalize U.S. manufacturing and introduce new energy efficient and market-leading products.

The new refrigerator has at least three compartments, the temperatures of which must be maintained at different levels. Temperature management is achieved by variable-speed fans and a system of dampers that change air flow based on information from temperature sensors placed in the various compartments. An electronic control drives the fans and dampers. The electronic controller also drives compressor operation and a unique three-way valve in the sealed system, which diverts refrigerant to the fresh-food and freezer evaporators. GE has also installed separate heaters on the fresh-food and freezer evaporators. The compressor and tri-valve operations, combined with fan and damper operations and the separate defrost for fresh-food and freezer compartments, enable the new refrigerator to achieve significant improvements in temperature management. As a direct result of the frequent temperature adjustments, the compressor cycles on and off more frequently but in less regular cycles, i.e., it does not cycle in the uniform fashion envisioned by the test procedure.

Hence, this Application and Petition.

III. GE's Proposed Test Procedure

In order to be assured that it is correctly calculating the energy consumption of the product, that it meets the minimum energy requirements for its product class and is properly labeled, GE seeks the Department's expeditious concurrence to its proposed amendment to the refrigerator test procedure to provide for testing of non-uniform compressor cycling models.

The test procedure in 10 C.F.R. 430, Subpart B, Appendix A1 was developed in the era of electro-mechanical controls when the only refrigerator function—compressor on-off—was based on one input: the temperature of a mix of fresh-food and freezer air. The resulting compressor cycling was so uniform—and the test procedure assumed that to be the case—that regularity of cycles is not even relevant to calculating unit energy consumption. The test procedure identifies a period as typical or representative of the energy used by the product in normal operation. The energy measured during this period is then used to calculate total product energy per a formula provided in the rule. For cycling compressors, the relevant section of the test procedure is found at 4.2.1.1:

Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor ''on'' cycle is terminated prior to start of the defrost heater and terminates at the second turn ''on'' of

the compressor or four hours from the initiation of the defrost heater, whichever comes first. See diagram in Figure 1 to this section.

The 2014 test procedure, 10 C.F.R. 430, Subpart B, Appendix A at 4.1.2.1, similarly is predicated upon the existence refrigerator compressors operating with uniform cycles:

[T]he second part starts at the termination of the last regular compressor ''on'' cycle. The average temperature of the compartment measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in the compartment to deviate from the first part temperature by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precool'' cycle, which is an extended compressor cycle that lowers the compartment temperature prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the initiation of the first regular compressor cycle after the compartment temperatures have fully recovered to their stable conditions. The average temperature of the compartment measured from this initiation of the first regular compressor ''on'' cycle until the initiation of the next regular compressor ''on'' cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. See Figure 1.

The Figure 1 referred to in this section also makes clear that the compressor cycles are presumed to be uniform.

GE's new refrigerator contains a separate fresh-food evaporator, which means that the models cannot be tested per the test procedure now in effect found at 10 C.F.R. 430, Subpart B, Appendix A1. Nor can GE use the 2014 test procedure found at 10 C.F.R. 430, Subpart B, Appendix A because it would compare the temperature of one cycle to the temperatures of the many cycles needed for Part 1, i.e. the compartment temperatures of non-uniform compressor cycling models do not attain the required .5° temperature differential from the average temperature ''measured for the first part of the test.'' (See at 4.2.1.1).

GE's proposed test procedure would allow for the testing of models like the ones listed on Attachment 1 with separate evaporators for the fresh-food compartment that also have non-uniform compressor cycling operations.

Approving this Application and Petition will not require a change in the energy calculation formula:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

It would, however, define Part 2, or $T2_i$ in the above formula, as the series of cycles, further defined as $A_{1\text{-}j}$ Cycles and $B_{1\text{-}k}$ Cycles, on either side of defrost that would be averaged to determine when the .5 ° differential had been achieved. The full text of the proposed test procedure amendment to be found in a new section 4.1.2.3 is the following:

4. Test Period

* * * * *

4.2.1.3 Non-uniform Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the beginning of the ''on'' cycle of the series of regular compressor cycles, Cycle $A_{I\text{-}j}$[1] in Figure 1 below. The average temperature of all compartments measured during Cycles $A_{I\text{–}j}$ must be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. The test period for the second part of the test ends at the termination of the series of regular compressor cycles, Cycle $B_{I\text{-}k}$[2] in Figure 1 below, after the average temperatures of all compartments are within 0.5 °F (0.3 °C) of their average as measured in the first part of the test.

As an example, if the average temperatures for Part 1 of the test are 37.8 °F and 0.2 °F in the fresh food and freezer compartments, respectively, and the temperatures for the Cycle B series of Part 2 of the test, i.e., Cycles $B_{I\text{-}k}$, are as follows,

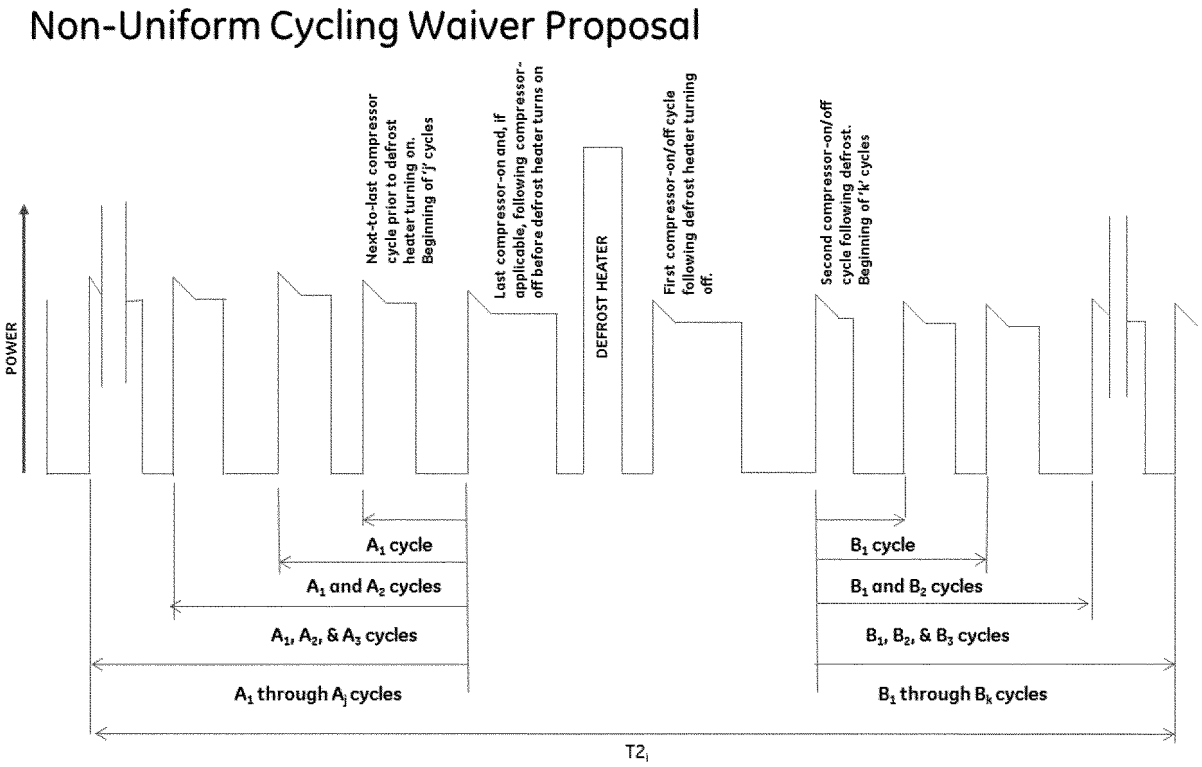
	Fresh food	Freezer
B_1	42.1 °F	4.3 °F
$B_{1\text{-}2}$	40.2 °F	2.1 °F
$B_{1\text{-}3}$	38.0 °F	0.0 °F

then the average temperatures for the Cycle B series are 38.0 °F and 0.0 °F, which are within the 0.5 °F (0.3 °C) requirement. In this example, Part 2 ends after cycle B_3.

[1] Subscripts 1-j in Cycle A denote the number of cycles to be averaged to obtain the temperatures of the fresh-food and freezer compartments before defrost.

[2] Subscripts 1-k in Cycle B denote the number of cycles to be averaged to obtain the temperatures of the fresh-food and freezer compartments after defrost.

Figure 3.



IV. Conclusion

For the above reasons, GE respectfully requests that the Assistant Secretary grant the above Application for Interim Waiver and Petition for Waiver so that the Company can proceed to production of its new electronic-controlled refrigerator models listed on Attachment 1. We requests expedited treatment of the Petition and Application and would be pleased to discuss these requests with DOE and provide further information as needed.

We hereby certify that all manufacturers of domestically marketed units of the same product type have been notified by letter of this Petition and Application, a list of which is found in Attachment 2, hereto.

Respectfully submitted,

Earl F. Jones,

Senior Counsel and Authorized Representative of GE Appliances

Attachment 1

CYE23T*D****

PYE23P*D****

PYE23K*D****

PWE23K*D****

[FR Doc. 2013–10401 Filed 5–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR–003]

Notice of Petition for Waiver of Hussmann From the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver and application for interim waiver from Hussmann, Inc. (Hussmann) (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Today's notice also grants an interim waiver to Hussmann from the commercial refrigerator, freezer and refrigerator-freezer test procedure. Through this notice, DOE also solicits comments with respect to the Hussmann petition.

DATES: DOE will accept comments, data, and information with respect to the Hussmann petition until June 3, 2013.

ADDRESSES: You may submit comments, identified by case number CR–003, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. CR–003'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items:

(1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317 (''sections 6311–6314'')), established the Energy Conservation Program for certain industrial equipment, which includes commercial refrigeration equipment, the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 6314(a)(6)(C) of EPCA directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 6313(c)(4), including (1) Ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 6314(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. (42 U.S.C. 6314(a)(6)(C)) On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use certain sections of Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets'' when measuring the energy consumption of this equipment. On January 9, 2009, DOE established energy conservation standards for certain classes of commercial refrigerators, effective January 1, 2012, and provided that the test procedures at 10 CFR 431.64 apply to that equipment. 74 FR 1092, 96. The basic models included in Hussmann's petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure as of January 1, 2012.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.401(e)(4).

II. Application for Interim Waiver and Petition for Waiver

On January 12, 2012, Hussmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64, as well as an application for interim waiver. Hussmann requested the waiver for its commercial refrigerators intended for short term display of frozen meat (separate from a frozen food case). This equipment is classified as a commercial freezer with a remote condensing unit designed for low temperature applications (category (ix)) in the table listing some of the applicable test procedure requirements at 10 CFR 431.64(b)(3)). The applicable test procedure for this equipment is specified in 10 CFR 431.64(b), which incorporates by reference ARI Standard 1200–2006, section 3, ''Definitions,'' section 4, ''Test Requirements,'' section 7, ''Symbols and Subscripts,'' and, section 5, ''Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets.''

Hussmann seeks a waiver and interim waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial freezers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that particular basic models of freezers are not able to operate at the specified integrated average temperature of 0 °F, which is required for testing and rating purposes. Instead, Hussmann asserts that the equipment can only operate from 8–18 °F. Consequently, Hussmann requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at an integrated average temperature of 12 °F, which Hussmann asserts is an acceptable temperature at which to test the specified basic models.

The Department articulated its position regarding basic models of commercial refrigeration equipment that are not capable of operating at the

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

required integrated average temperature specified by the DOE test procedure in a test procedure final rule published on February 21, 2012. 77 FR 10292. Specifically, to qualify to use the lowest application product temperature for a certain piece of equipment, a manufacturer should be confident that any case tested under that equipment rating could achieve the specified lowest application product temperature within ±2 °F and could not be tested at the rating temperature (i.e., integrated average temperature specified by the DOE test procedure) for the given equipment class. Further, in the final rule, DOE clarified that, for many pieces of equipment, the lowest application product temperature that should be used for testing will be the lowest temperature setting on the unit's thermostat. 77 FR 10292, 10303 (February 21, 2012).

DOE agrees with Hussmann's assertion that the basic models identified in its petition cannot be operated at the associated rating conditions currently specified for commercial freezers in the DOE test procedures given the available data. DOE has confirmed with Hussmann that 8 °F is the lowest temperature these basic models are capable of operating would be 8 °F. In light of this and DOE's position in the February 2012 final rule, DOE has concluded that Hussmann's request to test these basic models of commercial freezers at an integrated average temperature of 12 °F is inappropriate. Instead, DOE has determined that the basic models of commercial freezers listed in Hussmann's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of 8 °F.

DOE has determined that Hussmann's petition likely will be granted, and that it is desirable for public policy reasons to grant Hussmann relief pending a determination on the petition. DOE believes that it is likely Hussmann's petition will be granted because the refrigerators specified in Hussmann's petition are not able to operate at the specified integrated average temperature of 0 °F ± 2 °F. DOE previously granted interim waivers to Hill PHOENIX Inc. and Hussmann based on a similar issue pertaining to the ability to test certain of their products at the specified integrated average temperature in the DOE test procedure. (77 FR 5782, February 6, 2012 and 77 FR 4800, Jan. 31, 2012, respectively) In addition, DOE has determined that it is desirable that the energy efficiency of this equipment be tested and rated in a manner similar to other commercial refrigeration equipment while DOE considers the petition for waiver. As a result, DOE grants an interim waiver to Hussmann for the specified models of its commercial refrigerator products. Therefore, *it is ordered that:*

The application for interim waiver filed by Hussmann is hereby granted for Hussmann's specified models of commercial freezers, subject to the specifications and conditions below. Hussmann shall be required to test and rate the specified basic models according to the alternate test procedure as set forth in section III, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups: M1XL–4GE, M1XL–6GE, M1XL–8GE, M1XL–12GE, M1XLD–4GE, M1XLD–6GE, M1XLD–8GE, M1XLD–12GE

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hussmann may submit a petition for waiver and application for interim waiver, as appropriate, for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

As a condition for granting this interim waiver to Hussmann, DOE requires Hussmann to test the commercial refrigerators specified in its January 12, 2012 petition and listed above according to the test procedure specified at 10 CFR 431.64, except that instead of testing at the required integrated average temperature of 0 ± 2°F, Hussmann shall test the specified basic models at an integrated average temperature of 8 ± 2°F, which Hussmann indicated is the lowest temperature at which those models can operate.

DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hussmann's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. For the reasons articulated above, DOE also grants Hussmann an interim waiver from those procedures as described above. DOE is publishing Hussmann's petition for waiver in its entirety pursuant to 10 CFR 431.401(b)(1)(iv). The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Hussmann is required to follow as a condition of its interim waiver.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Ron Shebik, Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Petition for Waiver

Request for a test procedure waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of ''The prescribed test procedures may

evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.''

The design characteristics constituting the grounds for the waiver application:

1.1 Commercial Refrigerators shown above are intended for short term display of frozen meat (separate from a frozen food case). Food Safety testing has shown that food spoilage microbes and pathogens cease to grow at temperatures less than 34°F.

1.2 These commercial refrigerators are typically designed to display the meat at an Average Integrated Temperature (AIT) of 8°F—18°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). This case is designed to display frozen meat at a higher temperature than a frozen food case (with an AIT of 0°F ± 2°F).

1.3 DOE requires testing Low Temperature commercial refrigerators at an AIT of 0°F ± 2°F.

1.4 In order to reduce the AIT from the existing 8°F–18°F range to an AIT of 0°F ± 2°F, manufacturers will have to take the following steps:

a) Increase energy consumption to reduce the AIT.

b) Significantly change the design.

c) Use evaporator coils that consume higher amounts of refrigerant and/or use a higher capacity coil consuming more BTU's, resulting in higher energy consumption.

Need for the requested waiver:

1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64—or be subject to a waiver—before they are sold in commerce. But DOE's test procedure which establishes the 0°F ± 2°F AIT criteria based on the low temperature application does not contemplate commercial refrigerators that are designed to display frozen meat (an AIT of 8°F–18°F).

1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.

1.7 Testing of commercial refrigerators intended to display frozen meat at 0°F would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 8°F–18°F range. Reducing the AIT to 0°F only for test purposes will increase the energy consumption.)

Basic Models on which the waiver is being requested:

M1XL–4GE, M1XL–6GE, M1XL–8GE, M1XL–12GE

M1XLD–4GE, M1XLD–6GE, M1XLD–8GE, M1XLD–12GE

Specific Requirements sought to be waived—Commercial Refrigerators intended to display frozen meat shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption—An alternate test temperature of 12 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage are likely to result absent a favorable determination on the Petition for Waiver—Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Hussmann Corporation seeks a waiver from DOE's current requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Hussmann Corporation respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298–6483.

Sincerely,

Ron Shebik
Compliance Manager, Hussmann Corporation
12999 St. Charles Rock Road
Bridgeton, MO 63044

Certificate:

I hereby certify that I have this day served the foregoing document upon the following companies known to Hussmann Corporation to currently market systems in the United States which appear to be similar to the M1XL series & M1XLD series design:

Hill Phoenix
1003 Sigman Road
Conyers, GA 30013
Attn: Larry Howington, Engineer

Dated this 12th day of January 2012.

Ron Shebik,
Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044.

Application for Interim Waiver

Request for a test procedure Interim Waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of ''The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data''

The design characteristics constituting the grounds for the Interim Waiver Application:

1.1 Commercial Refrigerators shown above are intended for short term display of frozen meat (separate from a frozen food case). Food Safety testing has shown that food spoilage microbes and pathogens cease to grow at temperatures less than 34° F.

1.2 These commercial refrigerators are typically designed to display the meat at an Average Integrated Temperature (AIT) of 8°F–18°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). This case is designed to display frozen meat at a higher temperature than a frozen food case (with an AIT of 0°F ± 2°F).

1.3 DOE requires testing Low Temperature commercial refrigerators at an AIT of 0°F ± 2°F.

1.4 In order to reduce the AIT from the existing 8°F–18°F range to an AIT of 0°F ± 2°F, manufacturers will have to take the following steps:

a) Increase energy consumption to reduce the AIT.

b) Significantly change the design.

c) Use evaporator coils that consume higher amounts of refrigerant and/or use a higher capacity coil consuming more BTU's, resulting in higher energy consumption.

Need for the requested Interim Waiver:

1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64—or be subject to a waiver—before they are sold in commerce. But DOE's test procedure which establishes the 0°F ± 2°F AIT criteria based on the low temperature application does not contemplate commercial refrigerators that are designed to display frozen meat (an AIT of 8°F—18°F).

1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.

1.7 Testing of commercial refrigerators intended to display frozen meat at 0°F would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 8°F–18°F range. Reducing the AIT to 0°F only for test purposes will increase the energy consumption.)

Basic Models on which the Interim Waiver is being requested:

M1XL-4GE, M1XL-6GE, M1XL-8GE, M1XL-12GE

M1XLD-4GE, M1XLD-6GE, M1XLD-8GE, M1XLD-12GE

Specific Requirements sought to be waived—Commercial Refrigerators intended to display frozen meat shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption—An alternate test temperature of 12 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for Interim Waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage are likely to result absent a favorable determination on the Application for Interim Waiver—Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Hussmann Corporation seeks an Interim Waiver from DOE's current requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Hussmann Corporation respectfully asks the Department of Energy to grant an Interim Waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298–6483.

Sincerely,

Ron Shebik,

Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044.

[FR Doc. 2013–10378 Filed 5–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2794–010; ER10–2849–009; ER11–2028–010; ER12–1825–008.

Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC.

Description: Second Supplement to January 8, 2013 Updated Market Power Analysis for the Southwest Region of EDF Trading North America, LLC, et al.

Filed Date: 4/18/13.

Accession Number: 20130418–5142.

Comments Due: 5 p.m. ET 5/9/13.

Docket Numbers: ER12–718–004.

Applicants: PJM Interconnection, L.L.C., New York Independent System Operator, Inc.

Description: Extension of Joint Waiver Request of PJM Interconnection, L.L.C. and New York Independent System Operator, Inc.

Filed Date: 4/23/13.

Accession Number: 20130423–5207.

Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER12–2627–001; ER10–2488–005; ER12–1931–002; ER10–2504–003; ER12–610–003; ER13–338–001.

Applicants: Catalina Solar, LLC, Oasis Power Partners, LLC, Pacific Wind Lessee, LLC, Shiloh Wind Project 2, LLC, Shiloh III Lessee, LLC, Shiloh IV Lessee, LLC.

Description: Second Supplement to December 31, 2012 Triennial Market Power Analysis Update of the EDF Renewable Energy Inc. Southwest Region Companies.

Filed Date: 4/15/13.

Accession Number: 20130415–5213.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1069–002.

Applicants: MP2 Energy LLC.

Description: Amendment to be effective 4/24/2013.

Filed Date: 4/24/13.

Accession Number: 20130424–5001.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1322–000.

Applicants: Consolidated Edison Company of New York.

Description: PASNY Standby Filing to be effective 6/25/2013.

Filed Date: 4/24/13.

Accession Number: 20130424–5000.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1323–000.

Applicants: Southern California Edison Company.

Description: Small Generator Interconnection Agreement with ClearVista Energy, LLC to be effective 4/25/2013.

Filed Date: 4/24/13.

Accession Number: 20130424–5002.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1324–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Forest City PPA–RS 330 Revision (2013) to be effective 7/2/2012.

Filed Date: 4/24/13.

Accession Number: 20130424–5015.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1325–000.

Applicants: Wisconsin Public Service Corporation, Fox Energy Company LLC.

Description: Notice of Cancellation of Fox Energy MBR Tariff to be effective 4/24/2013.

Filed Date: 4/24/13.

Accession Number: 20130424–5042.

Comments Due: 5 p.m. ET 5/15/13.

Docket Numbers: ER13–1326–000.

Applicants: Wisconsin Public Service Corporation.

Description: Notice of Succession to be effective 4/24/2013.

Filed Date: 4/24/13.
Accession Number: 20130424–5047.
Comments Due: 5 p.m. ET 5/15/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–26–001.
Applicants: Entergy Louisiana, LLC.
Description: Entergy Louisiana, LLC submits Revision to Extension Request and Entergy Texas, Inc. submits Withdrawal of Extension Request.
Filed Date: 4/23/13.
Accession Number: 20130423–5199.
Comments Due: 5 p.m. ET 5/3/13.

Docket Numbers: ES12–52–001.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc. submits request for modification of the order dated October 11, 2012.
Filed Date: 4/23/13.
Accession Number: 20130423–5208.
Comments Due: 5 p.m. ET 5/14/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–10369 Filed 5–1–13; 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: RP13–813–000.
Applicants: TWP Pipeline LLC.
Description: Amendment to Non-Conforming Transportation Agreement to be effective 5/24/2013.
Filed Date: 4/24/13.
Accession Number: 20130424–5023.
Comments Due: 5 p.m. ET 5/6/13.

Docket Numbers: RP13–814–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Annual Adjustment to Rate Schedule SS–2 Storage Gas Balances 2013 to be effective 5/1/2013.
Filed Date: 4/24/13.
Accession Number: 20130424–5036.
Comments Due: 5 p.m. ET 5/6/13.

Docket Numbers: RP13–815–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Removal of Non Conforming and Neg Rate TSAs and Points of Contact Update Filing to be effective 5/25/2013.
Filed Date: 4/24/13.
Accession Number: 20130424–5064.
Comments Due: 5 p.m. ET 5/6/13.

Docket Numbers: RP13–816–000.
Applicants: Dominion Transmission, Inc..
Description: DTI—Abandonment of Rate Schedules X–15 and X–58 to be effective 5/28/2013.
Filed Date: 4/24/13.
Accession Number: 20130424–5085.
Comments Due: 5 p.m. ET 5/6/13.

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.

Filings in Existing Proceedings

Docket Numbers: RP13–460–001
Applicants: Cadeville Gas Storage LLC
Description: Cadeville Gas Storage Tariff Filing 4.24.13 to be effective 5/1/2013.
Filed Date: 4/24/13.
Accession Number: 20130424–5158.
Comments Due: 5 p.m. ET 5/6/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: April 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–10371 Filed 5–1–13; 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: RP13–810–000.
Applicants: Equitrans, L.P.
Description: Update System Map to be effective 5/23/2013.
Filed Date: 4/23/13.
Accession Number: 20130423–5064.
Comments Due: 5 p.m. ET 5/6/13.

Docket Numbers: RP13–811–000.
Applicants: TransColorado Gas Transmission Company L.
Description: Negotiated Rate Contract Name Change to be effective 5/23/2013.
Filed Date: 4/23/13.
Accession Number: 20130423–5101.
Comments Due: 5 p.m. ET 5/6/13.

Docket Numbers: RP13–812–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Negotiated Rates—Mid South Expansion Phase II to be effective 6/1/2013.
Filed Date: 4/23/13.
Accession Number: 20130423–5183.
Comments Due: 5 p.m. ET 5/6/13.

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: April 24, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–10370 Filed 5–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1333–000]

Meridian Energy USA, Inc. v. California Independent System Operator Corporation; Notice of Filing

Take notice that on April 24, 2013, Meridian Energy USA, Inc. (Meridian) submitted a request for a limited waiver of Appendix Y of the California Independent System Operator Corp. (CAISO) tariff to defer the second posting of Interconnection Financial Security for the Jacobs Canal Solar Farm, Laurel West Solar Farm, and Laurel East Solar Farm (Waiver Request). Meridian also submitted a motion for stay of Meridian's obligation to make the second posting of Interconnection Financial Security on May 4, 2013 (Motion for Stay). Meridian requests a shortened comment period of five days for the Motion for Stay and a shortened comment period of ten days for the Waiver Request.

Any person desiring to intervene or protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date for Motion for Stay: 5:00 p.m. Eastern Time on April 29, 2013.

Comment Date for Waiver Request: 5:00 p.m. Eastern Time on May 6, 2013.

Dated: April 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–10368 Filed 5–1–13; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 7, 2013 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee. Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–10533 Filed 4–30–13; 4:15 pm]

BILLING CODE 6715–01–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.*

311 LLC dba Ocean Transport (NVO & OFF), 10731 NW., 20th Court, Sunrise, FL 33322, Officers: Clara A. Diaz, Manager Member (QI), Gary O. Diaz, Manager Member, Application Type: New NVO & OFF License

American Container Line, Inc. (NVO & OFF), 15514 San Milo Drive, 1st Floor, Houston, TX 77068, Officer: Iqbal Q. Chowdhury, President (QI), Application Type: Add OFF Service

Avanti Transport Services Incorporated (NVO & OFF), 6060 W. Manchester Blvd., Suite 100, Los Angeles, CA 90045, Officer: Mark C. Baltasar, President (QI), Application Type: QI Change

Bruzzone Shipping, Inc. (NVO & OFF), 224 Buffalo Avenue, Freeport, NY 10520, Officers:, Victor J. Bruzzone, President (QI), Fred A. Bruzzone, Vice President, Application Type: Add NVO Service

Compass Freight Forwarding, Inc. (NVO & OFF), 6345 Coliseum Way, Oakland, CA 94621, Officers: Matilde H. Fernandes, Treasurer (QI), Victor R. Lacayo, President, Application Type: New NVO & OFF License

Da-Wood Trading LLC (NVO & OFF), 110 Godley Road, Suite A, Port Wentworth, GA 31407, Officer: Lucas Francis, Member (QI), Application Type: Add OFF Service

DHY Shipping Line, Inc. (NVO & OFF), 8 Sagebrush Circle, Pomona, CA 91766, Officers: Fnu Susuanti, Secretary (QI), Hsiu Yu Yeh, President, Application Type: New NVO & OFF License

E.T.H. Cargo Services Inc. (NVO & OFF), Avenida Galica Q 891, Carolina, PR 00983, Officers:, Wolfgang Herzig, President (QI), Claudia B. Herzig, Secretary, Application Type: Add NVO Service

East Point Group LLC dba Paradise Freight (NVO & OFF), 40 Castle Coakley, Christiansted, VI 00820, Officer: Matthew Leonard, Member (QI), Application Type: New NVO & OFF License

Maritime and Intermodal Logistics Systems, Inc. dba Mils dba Fesco, Integrated Transport (NVO & OFF), 1000 Second Avenue, Suite 1310, Seattle, WA 98104, Officers: Junko Altman, Secretary (QI), Michael Evans, President, Application Type: Name Change to Fesco Integrated Transport North

Neptune Shipping Limited dba Novalink Logistics (NVO), 2085 S. Atlantic Blvd., Suite H, Montery Park, CA 91754, Officers: Jennifer aka Pei Pei Li, Vice President (QI), Alex X. Xu, CFO, Application Type: QI Change

Ocean Trade Lines, Inc. (NVO), 2412 N. SR 7, Lauderdale Lakes, FL 33313, Officer: Konstantinos Constant, President (QI), Application Type: QI Change

Promax Automotive, Inc. (NVO & OFF), 33533 W. 12 Mile Road, Suite 300, Farmington Hills, MI 48331, Officers: Junichi Kikuchi, President (QI), Gene J. Esshaki, Secretary, Application

Type: License Transfer to Itochu Automobile America Inc.

Redline USA Inc (NVO), 3550 NW 115th Avenue, Miami, FL 33178, Officer: Carlos Zilli, President (QI), Application Type: New NVO License

Route 809 Freight Forward LLC (NVO & OFF), 7801 NW 66th Street, Miami, FL 33166, Officers: Eduardo Pichardo, Manager Member (QI), Indhira Pantaleon, Manager Member, Application Type: Add NVO Service

Royal Shipping Company, LLC (NVO), 491 N. James Road, Columbus, OH 43219, Officer: Nicholas Armah, Member (QI), Application Type: New NVO License

Seacoast Logistics Inc. (NVO & OFF), 2 Marshall Road, Unit D1, Kingston, NH 03848, Officer: Lauren Farrand, President (QI), Application Type: New NVO & OFF License

WS Project Services, Inc. (NVO), 13831 Northwest Freeway, Suite 410, Houston, TX 77040, Officers: Liang Yan, President (QI), Yan Wang, Vice President, Application Type: QI Change

By the Commission.

Dated: April 26, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–10343 Filed 5–1–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 018839NF.
Name: Aliana Express, Inc.
Address: 11100 E. Artesia Blvd., Suite #H, Cerritos, CA 90703.
Date Reissued: March 24, 2013.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–10332 Filed 5–1–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 2542F.
Name: Thomas M. Beidleman dba A.C.S. Forwarding.
Address: 2976 Alvardo Street, Terminal K, San Leandro, CA 94577.
Date Revoked: April 16, 2013.
Reason: Failed to maintain a valid bond.

License No.: 013266N.
Name: Trans-Aero-Mar, Inc.
Address: 8620 NW 70th Street, Miami, FL 33166.
Date Revoked: April 9, 2013.
Reason: Failed to maintain a valid bond.

License No.: 15637N.
Name: Combitrans Consolidators, Inc.
Address: 2400 Yorktown Street, Houston, TX 77056.
Date Revoked: April 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16338N.
Name: Brisk International Express, Inc.
Address: 8473 NW 74th Street, Miami, FL 33166.
Date Revoked: April 12, 2013.
Reason: Failed to maintain a valid bond.

License No.: 016491F.
Name: World International Cargo Transfer USA, Inc.
Address: 15832 S. Broadway Avenue, Suite D, Gardena, CA 90248.
Date Revoked: April 13, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16735NF.
Name: L R G International Inc.
Address: 5111 West Knox Street, Tampa, FL 33634.
Date Revoked: April 18, 2013.
Reason: Failed to maintain valid bonds.

License No.: 020500N.
Name: Ben-New Shipping, Inc.
Address: 1383 Kala Drive, Lithonia, GA 30058.
Date Revoked: April 11, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020686F.
Name: Combitrans Logistics, Inc.
Address: 2400 Yorktown Street, Houston, TX 77056.
Date Revoked: April 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020227NF.
Name: Rounders Logistics, LLC.
Address: 2374 Old Highway 60 W, Mulberry, FL 33860–9370.
Date Revoked: April 5, 2013.
Reason: Voluntary Surrender of License.

License No.: 023281N.
Name: Comis Global Logistics, Inc.
Address: 18005 Savarona Way, Carson, CA 90746.
Date Revoked: April 7, 2013.
Reason: Failed to maintain a valid bond.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–10333 Filed 5–1–13; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–12JF]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Returning our Veterans to Employment and Reintegration (ROVER): National Surveys of Assistance Dog Providers and Veterans, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under P.L. 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

Reintegrating Post-9/11 Veterans into civilian life and employment is complicated by recent exposure to war zone stressors (e.g., combat, bombs, improvised explosive devices, injury and death of military personnel and civilians) and development of clinical disorders, such as posttraumatic stress disorder (PTSD) and depression. PTSD, for example, is typified by such symptoms as re-experiencing war zone stressors (e.g., distracting intrusive

thoughts and images, disturbing nightmares); hyper-arousal (e.g., intense startle response, poor concentration and memory, constantly being on-guard, disturbed sleep, high irritability); and avoidance of people (family, friends, co-workers), places (such as enclosed areas, crowds), and things (e.g., loud noises, certain sights and smells) that remind one of war zone stressors. Such symptoms can have a significant impact on the ability of a Veteran to work in a setting with features such as other people, enclosed work areas, constant movement and noise, tasks that require concentration to details or safety issues, and stress related to requests and feedback of supervisors or task speed and accuracy.

An approach for helping Veterans with PTSD and other psychiatric impairments is that of using service dogs for assistance and support. A quick Internet search will find dozens of Web sites by providers of service dogs for Veterans, with assistance in transition to daily life (not necessarily employment) being the primary goal. In support of this overall approach, Senators Al Franken and Johnny Isakson cosponsored the *Service Dogs for Veterans Act,* to create a pilot program within Veterans Affairs to pair service dogs with Veterans who have physical and mental injuries and disabilities, including PTSD. The bill was signed into law by President Obama in mid-2009, but it is an unfunded mandate whose focus is not on employment. Thus, although there is significant interest in service dogs for Veterans to aid in readjustment, the focus has not been on employment.

The present research study will focus on the following questions with two surveys. Survey 1 of service dog providers will address the following questions:

1. Among assistance dog providers sampled in the U.S., how many provide services to Veterans?
2. Among assistance dog providers that provide services to Veterans, what are the specific strategies used or services offered to address issues related to Veterans and, specifically, return to work.
3. From the perspective of assistance dog providers, have the services or the requests for services to assist Veterans return to work increased, decreased, or remained the same during the past 5 years.

Survey 2 of Veterans will address the following questions:

The purpose of the study is to increase available information about services provided to Veterans by assistance dog training organizations, and to increase available information on Veteran's attitudes and perceptions about physical, psychological, physiological, and functional barriers that prevent Veterans with PTSD and other physical or psychiatric disorders from returning to work, and to provide information about the potential benefits of animals and animal-assisted interventions. Thus, the approach used in this study is descriptive. The surveys will be administered in a web-based format.

The information and the internet link to the web-based Survey 1 will be sent by email to approximately 1,000 service dog providers. On the basis of similar surveys of small businesses or non-profit organizations, it is estimated that approximately 300 or 30% of the organizations contacted will complete the survey. The burden table also accounts for approximately 700 people who will read the initial email or take the follow up phone call only. It's estimated that these activities (reading the email, taking the follow up phone call, and forwarding the survey announcement to appropriate personnel in the organization) will take approximately 10 min for a total burden of 117 hours.

For survey 2, an estimated 100 persons in various veterans agencies across the U.S. will receive email announcements of the veterans survey and a follow up phone call. The activities associated with reading the email, taking the follow up phone call, and distributing the flyer or forwarding the survey announcement to additional individuals is estimated to take up to 10 min. Based on recent surveys of veterans, a 10% response rate is expected from among the estimated 60,000 interested veterans from across all 50 states for a total number of 6,000 respondents. For each respondent, the expected time to complete the survey will be approximately 60 minutes.

Results of this survey will lead to recommendations and guidance for assistance dog providers, healthcare professionals, researchers, and policymakers pertaining to animal-assisted interventions to help facilitate the reintegration and reemployment of Veterans. There are no costs to the respondents other than their time. The total estimated annual burden hours are 6,284.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Assistance Dog Providers who read the initial email or take the follow up phone call only.	Assistance Dog Provider Recruitment Email.	700	1	10/60
Assistance Dog Providers choosing to complete survey	Assistance Dog Provider Survey.	300	1	30/60
Veterans Agency Contacts (persons in veterans agencies who read the initial email or take the follow up phone call).	Veterans Survey Announcement Email.	100	1	10/60
U.S. Veterans	Veteran Survey	6,000	1	1

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–10403 Filed 5–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:00 p.m.–2:00 p.m., June 20, 2013 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Officer, 2400 Executive Parkway, Mailstop E20, Atlanta, Georgia 30345, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–10360 Filed 5–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 78 FR 19711, dated April 2, 2013) is amended to consolidate the Office of the Chief Financial Officer and the Financial Management Office, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in its entirety the titles and functional statements for the Office of the Chief Financial Officer (CAJ1P) and the Financial Management Office (CAJE) insert the following:

Office of the Chief Financial Officer (CAJE). The Office of the Chief Financial Officer (OCF0) ensures that the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) accomplish their public health mission through agency-wide fiscal accountability and oversight.

Office of the Director (CAJE1). The OCFO Office of the Director provides leadership and coordination in the development and administration of the CDC's financial management policies, overseeing the Office of Finance and Accounting and the Office of Budget. Specifically, the OCFO: (1) Manages the financial risk of the agency, (2) provides leadership and advice on matters of budget formulation, budget and performance integration, and Congressional appropriations for CDC and ATSDR; (3) collaborates with the Agency's senior leadership in the development and implementation of long-range, strategic program and financial plans; (4) provides oversight of the agency's financial activities and accounting practices; (5) performs reviews and training in high risk areas for both the Agency and the Department where there appears to be fiscal vulnerabilities; (6) provides expertise in interpreting appropriations law issues and financial policy matters; (7) advises and assists the CDC Director, the Chief Operating Officer, and other key agency officials—both in program and business service offices—on all fiscal aspects of the agency; (8) participates in budget reviews and hearings; (9) manages CDC's system of internal budgetary planning and control of funds; (10) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures and prepares financial reports; (11) conducts CDC-wide manpower management (including productivity measurement) activities; (12) serves as the focal point for domestic and international travel policy, procedures and interpretation; (13) provides legislation reference services; (14) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (15) assists in identifying or conducting special financial management training programs; (16) maintains liaison with the Department of Health and Human Services (DHHS), Office of Management and Budget (OMB), Congress, and other government organizations on financial management matters; and (17) provides support for public health by ensuring that appropriated funds provided to the agency are utilized, in compliance with Congressional mandate, for the sole purpose of preventing and controlling infectious diseases domestically and globally.

Office of Management Services (CAJE13). (1) Collaborates and maintains liaison with CDC management officials to monitor and address priority issues of concern to CDC leadership; (2) manages the OCFO's operational budget processes, including planning, execution, and monitoring; (3) manages OCFO's acquisition processes; (4) analyzes and provides recommendations on workload efficiency and resource utilization; (5) provides direction, strategy, analysis, operational support, and recommendations in matters concerning organizational performance and management services within OCFO; (6) coordinates the development of, and maintains, strategic management and performance measurement tools within OCFO; (7) monitors OCFO organizational performance and provides recommendations on performance improvement; (8) provides management, oversight, and administrative support for OCFO service desk operations; (9) provides direction, strategy, analysis, and operational support in all aspects of OCFO's human resources operations; (10) provides leading practices in government financial management practices to OCFO; (11) develops, implements, and manages recruiting, hiring, retention, and succession strategies; (12) coordinates creation and implementation of operating standards/procedures and processes, and monitors compliance; (13) develops, implements, and manages the professional development strategy and plan for OCFO; (14) develops and implements OCFO's communication strategy and plan; (15) manages the development and communication of financial

management policies; (16) serves as OCFO's point of contact on all matters concerning facilities management and space utilization; and (17) serves as OCFO's coordinator of community of operations (COOP) activities.

Appropriations, Legislation, and Formulation Office (CAJE14). (1) Provides leadership, consultation, guidance, and advice on matters of public health and financial policy; (2) leads all CDC/ATSDR Congressional appropriations activities; (3) develops CDC/ATSDR's annual financial and public health policy request in accordance with DHHS, OMB, and Congressional requirements, policies, procedures, and regulations; (4) maintains liaison with the Office of the Secretary, Office of Management and Budget (OMB), other government organizations, and Congress on appropriations and financial policy matters; (5) develops materials for, and participates in, public health policy and financial reviews and hearings before DHHS, OMB, and Congress; (6) collaborates with other parts of CDC, and outside stakeholders, in the development and implementation of agency-wide financial and public health program plans; and (7) provides guidance and advice on the consolidation of budget and performance information as part of CDC's annual budget request.

Working Capital Fund (CAJE15). (1) Oversees implementation and operation of the working capital fund (WCF) for CDC, supporting the WCF Board, customers and service providers; (2) provides for execution of WCF operations; (3) ensures full cost recovery of fund activities; (4) collects operational data from service providers; (5) distributes WCF bills to customers; (6) provides support to standing committees; (7) gathers analysis and documentation for customer disputes; (8) monitors and reports on the financial condition of the fund; (9) monitors and reports on the performance of service providers; and (10) facilitates robust internal controls processes.

Office of Finance and Accounting (CAJEU). The Office of Finance and Accounting (OFA) provides financial services and policy for agency-level accounting functions, oversees financial data analysis, and reporting and financial systems management and business decision-making support surrounding the Agency's mission and goals.

Office of the Director (CAJEU1). Under the direction of the Finance and Accounting Officer, the OFA Office of the Director (OD) provides oversight and management of financial services and policy. Specifically, the OFA OD: (1) Provides agency-level accounting functions, financial data analysis, and reporting; (2) provides financial systems management and business decision-making support surrounding the agency's mission and goals; (3) provides commercial payment services to CDC customers and payment support to CDC offices; (4) provides debt management services to CDC customers; (5) provides travel, IPAC and international payment services and support to CDC customers and travelers; (6) supports agency-wide planning, analysis, and reporting for agency public health goals strategy; (7) reports on compliance with laws, regulations, and decisions to CDC's CFO, to include status of internal financial controls and annual audit of financial accounts.

Accounting Branch (CAJEUB). (1) Oversees and provides approach to accounting for the Agency; (2) manages accounting treatment for CDC on all business systems implementations and upgrades to current business systems; (3) manages all financial audit reviews for the OCFO and conducts risk assessment on internal controls; (4) prepares Standard Form (SF) 133 Report on Budget Execution for CDC Appropriation and Intra-Departmental Delegation of Authority (IDDAs), Federal Agencies' Centralized Trial-Balance System (FACTS) I and II Report and Year-End Closing Statement (2108 Report), and SF 224 or their equivalent and all other required financial reports as applicable; (5) prepares, analyzes fluctuations, and coordinates explanations for differences on all required financial statements and notes; (6) performs Government Performance and Results Act (GPRA) reporting analysis for compliance; (7) ensures compliance of federal and department reporting requirements; (8) coordinates accounting policy issues with the DHHS Office of Financial Policy and OCFO's Office of Management Services; (9) manages Fund Balance with Treasury, including authority, disbursements (payroll and non-payroll), collections, deposit funds and budget clearing accounts; (10) prepares manual and ADI journal vouchers for corrections to the general ledger; (11) performs monthly, quarterly, and year-end close out process of the general ledger; (12) serves as liaison with the Procurements and Grants Office, Buildings and Facilities Offices, Program Offices, and Budget Execution Services on capital asset procedures; (13) manages financial accounting for all assets for CDC, including real and personal property, equipment, land, leases, software, personal property, and stockpiles; (14) conducts financial and inventory reconciliations for all applicable assets, including inventory such as Vaccine for Children and Strategic National Stockpile, real and personal property, equipment, leases, leasehold improvements, land, and others as needed; (15) leads and directs grants management activities within OCFO; (16) provides training and assistance to CDC project officers and grants management officials on various financial management aspects of grants; (17) serves as liaison with grantees and other operating divisions for financial questions/inquiries related to grants; (18) manages the process to perform grant processing for commitments, obligations, advances, disbursements, and accruals; (19) manages grants transactions, such as vendor set-up, establishing sub-accounts, Common Accounting Number (CAN) set-up within the Payment Management System (PMS), reconciling sync file to PMS, and posting files from PMS; (20) conducts grant reviews, monitors rates of expenditure for existing grant awards, and supports Program in grant execution; and (21) records undelivered order adjustments or obligations as needed.

Financial Systems Branch (CAJEUC). (1) Provides management and coordination necessary for OCFO to have access to systems, data, and reporting capability; (2) develops, implements, and manages long-term systems strategy for OCFO; (3) provides systems analysis, design, programming, implementation, enhancement and documentation of OCFO related systems; (4) provides technical support and assistance for data error analysis and resolution, coordination of system initiatives, management of information technology resources, and the access and interpretation of financial system data; (5) serves as a liaison to the Unified Financial Management System (UFMS) Operations and Maintenance and other internal and external groups as needed; (6) manages all aspects of OCFO's systems security and administration; (7) performs certification and accreditation of OCFO systems; (8) performs CAN realignment coordination; and (9) manages OCFO hardware and equipment, and serves as the custodial officer.

Commercial Payment Branch (CAJEUD). (1) Manages all activities, policies, quality control, and audit support for accounts payable and disbursement functions for commercial payments; (2) serves as the CDC subject matter expert on all financial matters dealing with commercial payments; (3)

ensures all commercial payments are made in accordance with applicable Federal laws and standards, such as appropriations law; (4) serves as liaison with the Department of Treasury, the Centers/Institute/Offices (CI0s), as well as outside customers, to provide financial information and reconcile commercial payment issues; (5) provides training and advice on commercial payment and disbursement issues; (6) manages transactions related to commercial accounts payable and disbursements; (7) completes all reconciliations of sub-legers to general ledger related to commercial payments; (8) compiles and submits a variety of cash management and commercial reports required by Treasury and various outside agencies; (9) responds to commercial inquiries for invoices and certifies payments; (10) performs quality control and quality assurance reviews and participates in internal reviews; and (11) assists with undelivered order adjustments or obligations as needed.

Debt Management Branch (CAJEUE). (1) Oversees and provides approach to invoicing, billing, collections, reconciliations and reporting for the Agency; (2) serves as the central point of contact for the Agency on all debt management issues, including training and issue resolution; (3) develops strategy and analysis for reimbursable agreements in accordance with the center, division, and/or office; (4) manages all aspects of accounts receivable transactions in UFMS, prepares invoices, and processes billing; (5) works with programs, the Chief Financial Officer, and OCFO to resolve all posting errors, such as the resolution for over-obligated and unsigned agreements, indirect cost (IDC) calculations, and uncollectible debt; (6) analyzes the intra-and inter-governmental eliminations process for compliance with financial statements; (7) prepares and submits Agency-level financial reports to HHS/OS; and (8) prepares and submits the year end certification and verification of the Treasury Report on receivables.

Travel, IPAC, and International Payment Branch (CAJEUG). (1) Manages all activities, policies, quality control, and audit support for accounts payable and disbursement functions for travel, IPAC, and international payments; (2) serves as the CDC subject matter expert on all financial matters dealing with all travel, IPAC, and international payments; (3) ensures all travel, IPAC, and international payments are made in accordance with applicable Federal and international laws and standards, such as appropriations law; (4) serves as liaison with the Department of Treasury, the Centers/Institute/Offices (CI0s), as well as outside customers, to provide financial information and reconcile travel, IPAC, and international payment issues; (5) compiles and submits a variety of cash management and travel reports required by Treasury and various other outside agencies; (6) provides training and advice on payment, travel and disbursement issues; (7) manages transactions related to accounts payable, such as processing cables, reimbursements, IPAC disbursements, and payments for foreign nationals and visiting fellows; (8) completes all reconciliations of sub-legers to general ledger related to travel, IPAC, and international payments; (9) responds to traveler inquiries for vouchers and certifies payments; (10) manages change of station payment processing; (11) performs quality control and quality assurance reviews; (12) provides expertise, guidance, oversight, and interpretation of policies, laws, rules and regulations for all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (13) communicates and implements Departmental travel policies; (14) manages the administrative aspects of travel for the agency, including enforcement of travel card policy, delegations of authority, distribution of cash purchase memos, and approval of first-class memos; (15) serves as liaison with travel provider for travel contract matters; (16) provides travel support to the Emergency Operations Center; and (17) develops CDC conference travel planning and reporting for DHHS and Congress.

Office of Budget (CAJEV). Under the direction of the Budget Officer, the office provides oversight of agency-level budget execution functions, financial data analysis, and reporting; and oversees planning for agency-wide budget execution.

Office of the Director (CAJEV1). Under the direction of the Budget Officer, the office: (1) Provides agency-level budget execution functions, financial data analysis, and reporting; (2) provides budgetary information for business decision-making support surrounding the agency's mission and goals; (3) develops high-level plans to execute Agency-level budget; (4) ensures changes and plans are in compliance with decisions and Agency direction; (5) reports compliance of laws, regulations, and decisions to CDC's Budget Officer and CFO; (6) provides agency-wide budget planning, analysis, and reporting for agency budget execution and public health goals strategy; (7) provides Agency spend plan validation, remediation, and analysis; (8) provides funds control management for the Agency-level budget; (9) assists in the review of Congressional bill language to identify and properly account for earmarks and other directed programs; (10) provides Departmental and OMB reporting; and (11) provides budget execution for Centralized Mandatory Services.

Business Operations Unit (CAJEV12). (1) Provides agency-level budget execution functions, financial data analysis, and reporting; (2) assists the Office of Budget in researching budgetary information for business decision making support surrounding public health; (3) assists in developing plans to execute Agency-level budget; (4) ensures changes and plans are in compliance with decisions and Agency direction; (5) reports compliance of laws, regulations, and decisions to the budget officer; (6) assists in agency-wide budget planning, analysis, and reporting for Agency budget execution and public health goals strategy; (7) assists the budget officer in providing agency spending plan validation, remediation, and analysis; (8) provides information to the budget officer surrounding funds control management for the Agency's budget; (9) assists in the review of Congressional bill language to identify and properly account for earmarks and other directed programs; (10) assists in preparing Departmental and OMB reporting requirements; and (11) provides budget execution for Centralized Mandatory Services.

Budget Execution Services Branch 1 (CAJEVB). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise programs on future spending decisions; (7) assists program officials in developing sub-allocation of

Center, and/or Division ceilings; (8) communicates and shares knowledge with programs, OCFO Central, and CDC's OCFO budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 2 (CAJEVC). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports programs in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise program on future spending decisions; (7) assists program officials in developing sub-allocation of Center, and/or Division ceilings; (8) communicates and shares knowledge with programs, OCFO Central, and CDC's OCFO budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 3 (CAJEVD). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports programs in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise program on future spending decisions; (7) assists program officials in developing sub-allocation of Center, and/or Division ceilings; (8) communicates and shares knowledge with program, OCFO Central, and CDC's OCFO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 4 (CAJEVE). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise program on future spending decisions; (7) assists program officials in developing sub-allocation of Center, and/or Division ceilings; (8) communicates and shares knowledge with program, OCFO Central, and CDC's OCFO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 5 (CAJEVG). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports programs in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists program officials in developing sub-allocation of Center, and/or Division ceilings; (8) communicates and shares knowledge with program, OCFO Central, and CDC's OCFO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 6 (CAJEVH). This branch supports one or more Centers and/or Offices by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Centers, Divisions, and Offices; (4) manages and supports program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists program officials in developing sub-allocation of Center, and/or Division ceilings; (8) communicates and shares knowledge with programs, OCFO Central, and CDC's OCFO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Dated: April 18, 2013.

Sherri A. Berge,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–10324 Filed 5–1–13; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0380]

Agency Information Collection Activities; Proposed Collection; Comment Request; Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which an applicant may obtain an assignment or designation determination for combination products.

DATES: Submit either electronic or written comments on the collection of information by July 1, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications—(OMB Control Number 0910–0523)—Extension

This regulation relates to Agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of: (1) A drug and a device; (2) a device and a biological product; (3) a biological product and a drug; or (4) a drug, a device, and a biological product. The second purpose of this regulation is to enhance the efficiency of Agency management and operations by providing procedures for classifying and determining which Agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which Agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as the basis for making the assignment or designation decision. Most information required by the regulation is already required for premarket applications affecting drugs, devices, biological products and combination products. The respondents will be businesses or other for-profit organizations.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Part 3	43	1	43	24	1,032

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

These burden estimates are based on the number of applications FDA received over the past two fiscal years.

Dated: April 26, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–10376 Filed 5–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 27, 2013, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's phone number is 301–948–8900.

Contact Person: Shanika Craig, *Shanika.Craig@fda.hhs.gov,* Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6639, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On June 27, 2013, during session I, the committee will discuss and make recommendations regarding the proposed classification of sorbent hemoperfusion systems, one of the remaining preamendments class III devices. The class III sorbent hemoperfusion system is a device intended for the treatment of poisoning, drug overdose, hepatic coma, and metabolic disturbances. It consists of an extracorporeal blood system and a container filled with adsorbent material that removes a wide range of substances, both toxic and normal, from blood flowing through it. The adsorbent materials are usually activated carbon or resins, which may be coated or immobilized to prevent fine particles from entering the patient's blood. The generic type of device may include lines and filters specifically designed to connect the device to the extracorporeal blood system. Sorbent hemoperfusion systems may also include the machine or instrument used to drive and manage blood and fluid flow within the extracorporeal circuit, as well as any accompanying controllers, monitors, or sensors.

On April 4, 2013 (78 FR 20268), FDA issued a proposed order which, if made final, would reclassify sorbent hemoperfusion systems labeled for the treatment of poisoning and drug overdose class II subject to premarket notification [510(k)] and special controls, while sorbent hemoperfusion systems labeled for the treatment of hepatic coma and metabolic disturbances would remain class III requiring premarket approval (PMA) applications. The committee's discussion will involve making recommendations regarding the regulatory classifications noted above. The committee will also discuss whether the proposed special controls are adequate to reasonably ensure the safety and effectiveness of sorbent hemoperfusion devices labeled for the treatment of poisoning and drug overdose. The regulatory history of sorbent hemoperfusion has been discussed as part of a previously published proposed rule (77 FR 9610).

During session II on June 27, 2013, the committee will discuss and make recommendations regarding the proposed classification of implanted blood access devices for hemodialysis from class III to class II. The class III implanted blood access devices for hemodialysis include various flexible or rigid tubes, such as catheters, cannulae or hollow needles. Chronic hemodialysis catheters are soft, blunt-tipped plastic catheters that have a subcutaneous ''cuff'' for tissue ingrowth. They are placed in a central vein to allow blood access. Chronic hemodialysis catheters serve as conduits for the removal of blood from the patient, delivery to a hemodialysis machine for filtering, and return of filtered blood to the patient. They have no moving parts, consisting, essentially, of flexible tubing terminating in rigid Luer lock connectors for attachment to a dialysis machine. Subcutaneous catheters are totally implanted below the skin surface with no external communication. Arteriovenous shunts and vessel tips are tubing with tapered tips that are inserted into the artery and vein. The tubing is attached to the roughened or etched outer surface of the tip. The tubing is external to the skin and can be accessed with needles. They are similar to subcutaneous catheters.

On June 20, 2012 (77 FR 36951), FDA issued a proposed rule which, if made final, would make the class III implanted blood access devices class II subject to premarket notification [510(k)] and special controls. The regulatory history of implanted blood access devices has been discussed as part of the proposed rule (77 FR 36951).

The committee's discussion will involve making recommendations regarding regulatory classification to either reaffirm class III or reclassify these devices into class II and comment on whether special controls are adequate to reasonably ensure the safety and effectiveness of this device.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 11, 2013. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. for session I and session II will start immediately after lunch between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 3, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 4, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, Committee Management Staff, at *james.clark@fda.hhs.gov*, or 301–796–5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/*

ucm111462.htm for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 26, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–10394 Filed 5–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0294]

Submission of New Drug Application/ Abbreviated New Drug Application Field Alert Reports: Notice of Form FDA 3331—Automated Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a pilot program to test an XML (extensible markup language)-enabled Adobe PDF form, Form FDA 3331—Automated to submit new drug application (NDA) and abbreviated new drug application (ANDA) Field Alert Reports (FARs) as required by FDA regulations. This pilot program is intended to provide FDA with information to allow the Agency to modernize the FAR submission and review pathway and will permit integration with electronic archive filing systems.

DATES: The XML-enabled Adobe PDF form, Form FDA 3331—Automated, will be available for piloting between May 1, 2013, and January 1, 2014.

ADDRESSES: Electronic or written general comments regarding the pilot may be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The automated form, detailed instructions for use, and frequently asked questions are available at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm347604.htm*.

Questions or feedback about the pilot program should be sent to district Drug Field Alert Monitors (contact information for each of these individuals is available on FDA's Web site at *http://www.fda.gov/ICECI/Inspections/IOM/ucm124063.htm*). FDA's Center for Drug Evaluation and Research (CDER) has also established an email account, *CDER-FAR-XML@fda.hhs.gov*, to receive feedback on participants' experiences using the XML-enabled Form FDA 3331—Automated.

FOR FURTHER INFORMATION CONTACT: Mark Browning, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5342.

SUPPLEMENTARY INFORMATION:

I. Background

This pilot program seeks to modernize the FAR submission and review pathway using an XML-enabled PDF form to enable integration with electronic archive filing systems and simplify data integration across the enterprise. Under existing procedures, firms typically submit FARs via fax or scanned copy to their respective FDA district offices, and the district offices then provide them to CDER for additional review and analysis. Under this pilot program, participants will be able to send the FAR report simultaneously to the selected FDA district office and to CDER's Office of Compliance, allowing for improved coordination within the Agency as well as more efficient reporting by industry. The pilot program will also offer industry participants the opportunity to provide the Agency with feedback regarding the use of the automated form. FDA will take industry feedback into account when improving the FAR reporting process overall.

The pilot is open to all NDA and ANDA holders. Participation in the pilot program is voluntary and no additional software or licenses are needed to use the proposed Form FDA 3331—Automated. For the period of the pilot program, firms that elect to participate must continue to submit a signed Form FDA 3331 (whether the traditional or the automated version) via email, along with the pilot automated form. This parallel process during the pilot program will ensure delivery of all field alert reports and allow FDA to evaluate the utility of an automated form.

The pilot program will run for 8 months following the date of the **Federal Register** Notice and may be extended as needed to accrue sufficient reports and experience for a meaningful evaluation. After the pilot concludes, CDER and the Office of Regulatory Affairs will evaluate the forms submitted along with any direct industry feedback about using the automated form. If the pilot is successful, FDA would likely seek to adopt a more permanent, required electronic reporting system, which would be implemented in accordance with existing regulation- and guidance-making processes, as needed.

The automated form, detailed instructions for use, and frequently asked questions are available on FDA's Web site at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm347604.htm*.

II. Comments and Other Feedback

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written general 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*.

Participants should contact their district Drug Field Alert Monitors for questions or feedback about the pilot program. Contact information for each district Drug Field Alert Monitor is available on FDA's Web site at *http://www.fda.gov/ICECI/Inspections/IOM/ucm124063.htm*. CDER has also established an email account, *CDER-FAR-XML@fda.hhs.gov*, to receive feedback on participants' experiences using the XML-enabled Form FDA 3331—Automated.

III. The Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in Form FDA 3331 has been approved under OMB control number 0910–0001.

Dated: April 26, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–10379 Filed 5–1–13; 8:45 am]

BILLING CODE 4160–01–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 Reports Clearance Office at (301) 443–1984.

Information Collection Request Title: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108)—Extension.

Abstract: The Health Education Assistance Loan (HEAL) Program has regulations that contain notification, reporting, and recordkeeping requirements to ensure that the lenders and holders participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under the OMB number referenced above, much of the burden associated with the regulations is cleared under separate OMB numbers for the HEAL forms and electronic submissions used to report required information.

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.

Number of respondents	Number of transactions	Total transactions	Hours per response (minutes)	Total burden hours
Reporting Requirements				
15 Holders	4	60	12	12
0 Schools	0	0	0	0
Total Reporting				12
Notification Requirements				
22,000 Borrowers	1	22,000	10	3,667
15 Holders	6,500	97,500	10	16,250
0 Schools	0	0	0	0
Total Notification				19,917
Recordkeeping Requirements				
15 Holders	2,600	39,000	14	9,100
0 Schools	0	0	0	0
Total Recordkeeping				9,100
Total Burden Hours				29,029

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: April 26, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–10375 Filed 5–1–13; 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 Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's

functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Health Center Program Application Forms: (OMB No. 0915–0285 Revision).

Abstract: Health centers (section 330 grant funded and Federally Qualified Health Center Look-Alikes) deliver comprehensive, high quality, cost-effective primary health care to patients regardless of their ability to pay. Health centers have become an essential primary care provider for America's most vulnerable populations. Health centers advance the preventive and primary medical/health care home model of coordinated, comprehensive, and patient-centered care, coordinating a wide range of medical, dental, behavioral, and social services. More than 1,200 health centers operate nearly 9,000 service delivery sites that provide care in every state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin.

The Health Centers Program is administered by HRSA's Bureau of Primary Health Care (BPHC). HRSA/BPHC uses the following application forms to oversee the Health Center Program. These application forms are used by new and existing Health centers to apply for various grant and non-grant opportunities, renew their grant or non-grant designation, and change their scope of project.

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:

Type of application form	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Form 1A: General Information Worksheet	1,350	1	1,350	2.0	2,700
Planning Grant: General Information Worksheet	250	1	250	2.5	625
Form 1B: BPHC Funding Request Summary	1,200	1	1,350	2.0	2,700
Form 1C: Documents on File	1,350	1	1,350	1.0	1,350
Form 2: Proposed Staff Profile	1,350	1	1,350	2.0	2,700
Form 3: Income Analysis Form	1,200	1	1,200	5.0	6,000
Form 4: Community Characteristics	1,350	1	1,350	1.0	1,350
Health Care Plan (Competing)	800	1	800	2.0	1,600
Health Care Plan (Non-Competing)	550	1	550	1.0	550
Business Plan (Competing)	800	1	800	2.0	1,600
Business Plan (Non-Competing)	550	1	550	1.0	550
Form 5A: Services Provided	700	1	700	1.0	700
Form 5B: Sites Listing	700	1	700	1.0	700
Form 5C: Other Site Activities	700	1	700	0.5	350
Change In Scope (CIS) Site—Add Checklist	700	1	700	1.0	700
CIS Site—Delete Checklist	700	1	700	1.0	700
CIS Relocation Checklist	700	1	700	1.0	700
CIS Service—Add Checklist	700	1	700	1.0	700
CIS Service—Delete Checklist	700	1	700	1.0	700
Add New Target Population	50	1	50	1.0	50
Form 6A: Board Member Characteristics	1,350	1	1,350	1.0	1,350
Form 6B: Request for Waiver of Governance Requirements	150	1	150	1.0	150
Form 8: Health Center Affiliation Certification	250	1	250	1.0	250
Form 9: Need for Assistance	400	1	400	3.0	1,200
Form 10: Emergency Preparedness Form	1,350	1	1,350	1.0	1,350
Form 12: Organization Points of Contact	1,350	1	1,350	0.5	675
EHR Readiness Checklist	250	1	250	1.0	250
Environmental Information and Documentation (EID)	400	1	400	2.0	800
Assurances	900	1	900	.5	450
Equipment List	400	1	400	1.0	400
Other Requirements for Sites	400	1	400	.5	200
Project Work Plan	400	1	400	1.0	400
Summary Page	400	1	400	.5	200
Verification Check List	200	1	200	.5	100
Alteration/Renovation (A/R) Project cover Page	400	1	400	1.0	400
Proposal Cover Page	400	1	400	1.0	400
Consolidated Budget	400	1	400	.5	200
Consolidated Funding Sources	400	1	400	1.0	400
Project Qualification Criteria	400	1	400	1.0	400
Project Cover Page	400	1	400	.5	200
Other Project Document	400	1	400	1.0	400
Funding Sources	400	1	400	.5	200
Total	1,350	1	27,950		37,400

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.

DATES: *Deadline:* Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: April 26, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–10377 Filed 5–1–13; 8:45 am]

BILLING CODE 4165–15–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; Cancer Therapeutics AREA Grant Applications.

Date: May 22, 2013.

Time: 12:00 p.m. to 4:00 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: Denise R Shaw, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: May 23, 2013.

Time: 8:00 a.m. to 8:00 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: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208*hongb@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: 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10334 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC review.

Date: June 11, 2013.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 951, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 Review National Resources IMS.

Date: June 20–21, 2013.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: April 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10340 Filed 5–1–13; 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; Member Conflict: Auditory Neuroscience.

Date: May 14, 2013.

Time: 1:00 p.m. to 2:00 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: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323. *luethkel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Academic Research Enhancement Award.

Date: May 17, 2013.

Time: 8:00 a.m. to 3:00 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: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301–435–1717, *henryrr@mail.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: *April 25, 2013.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10335 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Leadership Group for a HIV Vaccines Clinical Network.

Date: May 23–24, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Eugene R. Baizman, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–1464, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10338 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–013–Research Using Biosamples from EDIC/GOKind Type I Diabetes Clinical Studies (DP3).

Date: June 10, 2013.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–013–Research Using Biosamples from TrialNet/DPT–1 Type Diabetes Clinical Studies (DP3).

Date: June 10, 2013.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: June 13, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.

Date: June 13, 2013.

Time: 4:00 p.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: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

April 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10341 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 4, 2013.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To discuss administrative details relating to the Council's business and special reports.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D. Director, Division of Extramural Research Activities, NIAMS/NIH, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 24, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10339 Filed 5–1–13; 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: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: May 28, 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, (Telephone Conference Call).

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–138: NHLBI Systems Biology.

Date: May 28–29, 2013.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Effects on biomarkers of prognosis and survival.

Date: May 29, 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, (Telephone Conference Call).

Contact Person: Martha L Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Lymphatics in Health and Disease in the Digestive, Urinary, Cardiovascular and Pulmonary Systems.

Date: May 29–30, 2013.

Time: 10:00 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: Bonnie L Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: May 29–30, 2013.

Time: 11:00 a.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L Schneider, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: May 29–30, 2013.

Time: 7:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@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: April 26, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10336 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel; Review of Victor Competitive Revisions.

Date: May 30, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: U.S. Environmental Protection Agency (EPA), C604–01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

Contact Person: Janice B Allen, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 24, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10342 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA AA13–001, Specialized Alcohol Research Centers.

Date: August 15, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Teleconference, NIAAA, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Richard A Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599 *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: April 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–10337 Filed 5–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5505–FA–01]

Announcement of Funding Awards; Energy Innovation Fund—Multifamily Pilot Program Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Energy Innovation Fund—Multifamily Pilot Program (EIF) for Fiscal Year (FY) 2010. This announcement alphabetically lists the organizational names and addresses of those award recipients selected for funding based on one of two award categories (applied research or financial demonstration), the amount of the award, and the area of geographic impact.

FOR FURTHER INFORMATION CONTACT: Linda W. Field, Director of Portfolio Management, Office of Affordable Housing Preservation, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 6222, Washington, DC 20410. Telephone number 202–402–8374 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Energy Innovation Fund Program (EIF) will support innovations in financing and conducting applied research to address primary barriers to the retrofitting of certain multifamily residential properties to be more energy efficient on a cost effective basis. The goals of this NOFA are to: (1) Demonstrate solutions to the primary and longstanding challenges to implementing energy efficiency and renewable energy improvements in existing affordable multifamily properties; (2) leverage private capital and additional public funding to demonstrate ''proof of concept'' of specific models; and (3) conduct applied research to document and disseminate mainstream, scalable approaches to retrofitting affordable multifamily properties.

The Department published its Energy Innovation Fund—Multifamily Pilot Program (EIF) Notice of Funding Availability (NOFA) on August 22, 2011 announcing the availability of $25,000,000 out of the Department's FY 2010 budget appropriation, to be utilized for EIF projects and activities. Funding availability for Financing Demonstration Components was capped at $7,500,000 and for Applied Research Demonstration Components, the maximum award amount was $3,000,000 to any applicant.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2010 NOFA. As a result, HUD has funded the twelve applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details identifying the recipients of funding awards and their scope of work in Appendix A of this document.

Dated: April 29, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing.

APPENDIX A

Organization	Key contact	Grant amount	Geographic impact
APPLIED RESEARCH DEMONSTRATION			
Columbus Property Management & Development, Inc., 2042–48 Arch Street, 2nd Floor, Philadelphia, PA 19103.	Moira Rooney 215–557–8484 x3251.	$3,000,000	Greater Philadelphia metropolitan area.
Community Environmental Center, Inc., 43–10 11th Street, Long Island City, New York 11101.	Jay Ackley 718–784–1444 x148.	3,000,000	New York City (Bronx, Brooklyn, Manhattan, and Queens).
Enterprise Community Partners, Inc., One Whitehall Street, 11th Floor, New York, NY 10004.	Esther Toporovsky 212–284–7104.	2,795,071	New York City, Chicago Area, Southern California.
Heat Watch, LLC, 6 Beechwood Drive, Glen Head, NY 11545.	Daniel Carleton 516–672–1499	356,300	New York City (Bronx, Brooklyn, and Manhattan), and Yonkers.
iCast, 777 South Wadsworth Boulevard, Building 4, Suite 205, Lakewood, Colorado 80226.	Ravi Malhotra 303–462–4100 x801.	590,118	State of Colorado.
Jonathan Rose Companies, LLC, 551 Fifth Avenue, New York, NY 10176.	Clay McPhail 917–542–3647 ..	325,732	Newark, New Jersey.
New Ecology, Inc., 15 Court Square, Suite 420, Boston, MA 02108.	Eric Gardner 617–557–1700 x35.	989,275	Commonwealth of Massachusetts.
Stewards of Affordable Housing for the Future, 555 11th Street NW., Suite 525, Washington, DC 20004.	Rick Samson 202–737–5978 ..	1,500,000	National scope.
University of Illinois, (The Board of Trustees of), 1901 South First Street, Champaign, IL 61820–7406.	Kate Brown 217–244–4671	500,000	Champaign, Cook, Lake, and Union counties.
Total for Applied Research Demonstration Component.	.....	13,056,496	
FINANCING DEMONSTRATION			
Maryland Dept. of Housing & Community Development, 100 Community Place, Crownsville, MD 21032.	Danielle England 410–514–7441.	1,250,000	Anne Arundel, Baltimore, Cecil, Frederick, Hartford, Howard, Montgomery, Prince George's, and St. Mary's Counties.
Network for Oregon Affordable Housing, 1020 SW Taylor, Suite 585, Portland, Oregon 97205.	Bill Van Vliet 503–501–5680 ...	3,000,000	Greater Portland, OR metropolitan area.
NRG Solutions, LLC, 6 Faneuil Hall Marketplace, Boston, MA 02109.	Darien Crimmons 617–239–4540.	5,250,000	NY, CT, MA, RI, VT, ME, and New York City.
Total for Financing Demonstration Component ..	.....	9,500,000	
Total EIF Grant Awards	.....	22,556,496	

[FR Doc. 2013–10414 Filed 5–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–FA–04A; Docket No. FR–5600–FA–04B; Docket No. FR–5600–FA–07]

Announcement of Funding Awards for Office of Healthy Homes and Lead Hazard Control (OHHLHC) Grant Programs for Fiscal Year (FY) 2012; Correction of OHHLHC Announcement of Funding Awards for FY 2011 and 2010

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Office of Healthy Homes and Lead Hazard Control (OHHLHC) Grant Program Notices of Funding Availability. This announcement contains the name and address of the award recipients and the amounts of awards under the Consolidated Appropriations Act, 2012, and prior-year appropriations. In addition this announcement notifies the public of a correction regarding the announcements of funding awards under the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and a competition under the Omnibus Appropriations Act, 2010.

FOR FURTHER INFORMATION CONTACT: Matthew E. Ammon, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room 8236, 451 Seventh Street SW., Washington, DC 20410, telephone 202–402–4337. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Funding Awards for FY 2012

HUD announced the FY 2012 awards on September 19, 2011. These awards were the result of competitions posted on the Internet at Grants.gov on November 28, 2011 for Lead Based Paint Hazard Control (FR–5600–N–04); on November 28, 2011 for Lead Hazard Reduction Demonstration Programs (FR–5600–N–04); and on November 30, 2011 for Healthy Homes Technical Studies Programs (FR–5600–N–07). The purpose of the competitions was to award funding for grants and cooperative agreements for the Office of Healthy Homes and Lead Hazard Control Grant Programs.

Applications were scored and selected on the basis of selection criteria contained in these Notices. A total of $117,597,109 was awarded under the HUD appropriations act for FY 2012, namely, the Consolidated Appropriations Act, 2012, (Pub. L. 112–10, approved April 15, 2011) and prior year appropriations. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987; 42 U.S.C. 3545), the Department is publishing the names, addresses, and the amount of these awards as follows:

1. Lead Based Paint Hazard Control Grant Program

A total of $ $75,201,190 was awarded to 32 grantees for the Lead Based Paint Hazard Control Grant Program and an additional $5,329,093 was awarded to 30 out of the 32 grantees for the Healthy Homes Initiative was under the Consolidated Appropriations Act, 2012: Michigan Department of Community Health, P.O. Box 30195, 201 Townsend Street, Lansing, MI 48909–7695, $2,479,602; City of Long Beach, 2525 Grand Avenue, Long Beach, CA 90815–1765, $2,479,996; Naugatuck Valley Health District, 98 Bank Street, Seymour, CT 06483–2856, $2,480,000; City of Tucson, 310 N. Commerce Park Loop, Tucson, AZ 85745–2700, $2,480,000; Pennsylvania Department of Health, Health and Welfare Building, 7th Floor, East Wing, 625 Forster Street, Harrisburg, PA 171200–0701, $2,480,000; City of Marshalltown, 24 North Center Street, Marshalltown, IA 50158–9916, $2,480,000; Kansas City Missouri Health Department, 2400 Troost Avenue, Suite 3100, Kansas City, MO 64108–2666, $2,480,000; City of Richmond, 450 Civic Center Plaza, Richmond, CA 94804–0046, $2,480,000; Cuyahoga County Board, 5550 Venture Drive, Cuyahoga, OH $2,480,000; County of Lawrence, 430 Court Street, New Castle, PA, 16101–3503, $2,480,000; Washington State Department of Commerce, 1011 Plum Street SE., Olympia, WA 98504–2525, $2,480,000; City of Fort Wayne, 200 East Berry Street, Fort Wayne, IN 46802–2731, $2,478,240; City of Worcester, 455 Main Street, Worcester, MA 01608–1821, $2,480,000; City of Norwich, 23 Union Street, Norwich, CT 06360–4416, $2,107,857 City of Springfield, 76 East High Street, Springfield, OH 45502–1214, $2,480,000; Maine State Housing Authority, 353 Water Street, Augusta, ME 04330–4665, $2,409,093; City of New Haven, 54 Meadow Street 9th Floor, New Haven, CT 06519, $2,480,000; Onondaga County, 1100 Civic Center, Syracuse, NY 13202–2908, $2,480,000; San Diego Housing Commission, 1122 Broadway, Suite 300, San Diego, CA 92101–5612, $2,480,000; Charter County of Wayne, 33030 Van Born Road, Wayne, MI 48184, $2,480,000; Kenosha County, 8600 Sheridan Road, Suite 600, Kenosha WI 53143–6515, $2,480,000; City of Minneapolis, 250 South 4th Street, Room 414, Minneapolis, MN 55415–1316, $2,480,000; City of Grand Rapids 300 Monroe Avenue NW., Grand Rapids, MI 49503–2206, $2,480,000; New Hampshire Housing Finance Authority, 32 Constitution Drive, Bedford, NH 03110–6092, $2,480,000; City of Charlotte, 600 East Trade Street, Charlotte, NC 28202, $2,479,414; Housing Authority of South Bend, 501 Alonzo Watson Drive, South Bend, IN 46601–3730, $2,480,000; County of Elkhart, 4230 Elkhart Road, Goshen, IN 46526, $2,480,000; City of Sioux City, 405 6th Street, Sioux City, IA 51102, $2,480,000; Lucas County Regional Health District, 635 North Erie Street, Toledo, OH 43604–5317, $2,480,000; City of Nashua, 229 Main Street, Nashua, NH 03060–2938, $2,480,000; Madison County, 130 Hillsboro Avenue, Edwardsville, IL 62025–1636, $1,976,081. The two Lead Based Paint Hazard Control grants that did not receive the Healthy Homes Initiative Supplement were the City of Kankakee, 850 N. Hobbie Avenue, Kankakee, IL 60901, $2,300,000; and California Department of Community Services and Development, 2389 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833–4246, $2,300,000.

2. Lead Hazard Reduction Demonstration Grant Program

A total of $34,011,932 was awarded to 12 grantees for the Lead Hazard Reduction Demonstration Grant Program under the Consolidated Appropriations Act, 2012: New York City Department of Housing Preservation and Development, 100 Gold Street, New York, NY 10038, $3,000,000; City of Spokane, 808 West Spokane Falls Boulevard, Spokane, WA 99201; $2,400,000; City of Syracuse, 201 E. Washington Street, Syracuse, NY 13202–1410, $3,000,000; City of Akron, 166 South High Street, Akron, OH 44308–1828, $3,000,000; City of Los Angeles, 1200 W. 7th Street, 9th Floor, Los Angeles, CA 90017–2349, $3,000,000; District of Columbia, 1800 Martin Luther King Jr. Avenue SE., Suite 300, Washington, DC 20020, $2,998,810; City of Milwaukee Community Relations Social Development Commission, 4041 North Richards Street, Milwaukee, WI 53212–1232, $3,000,000; City of Cincinnati, 801 Plum Street, Cincinnati, OH 45202, $3,000,000; City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6312, $3,000,000; City of Rochester, 30 Church Street, Room 005A, Rochester, NY 14614–1290, $3,000,000; Baltimore City Department of Housing and Community Development, 417 E. Fayette Street, Room 1114, Baltimore, MD 21202–0328, $2,900,000; Vermont Housing and Conservative Board, 58 East State Street, Montpelier, VT 05602–3044, $1,713,122.

3. Healthy Homes Technical Studies Grant Program

A total of $3,054,894 was awarded to 5 grantees for Healthy Homes Technical Studies Grant Program under the Consolidated Appropriations Act, 2012: Health Research, Inc., New York State Department of Health, Riverview Center, 150 Broadway, Suite 560, Menands, NY 12204–2719, $500,000; Silent Spring Institute, 29 Crafts Street, Newton, MA 02458–1283, $699,793; Wayne State University Center for Urban Studies, 5057 Woodward Avenue, 13th Floor, Suite 13202, Detroit, MI 48201–4050, $692,221; Appalachian State University, 287 Rivers Street, Suite 232, Boone, NC 28608, $696,810; Boston University, Trustees of Boston University, 85 East Newton Street, M–921, Boston, MA 02118–2340, $466,070.

B. Correction to FY 2011 Announcement of Funding Awards

A grant of $2,500,000 was awarded for the FY2011 Lead Hazard Reduction Demonstration Grant Program under the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10). There was an omission in the OHHLHC's FY 2011 Announcement of Funding Awards (77 **Federal Register** 19306–07, March 30, 2012) of the award for the City and County of San Francisco, Mayor Office of Housing, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, which is corrected here.

C. Correction to FY 2010 Announcement of Funding Awards

A grant of $425,000 was awarded for the FY 2010 Asthma Interventions in Public and Assisted Multifamily Housing (AIPAMH) Grant Program under the Omnibus Appropriations Act, 2010 (Pub. L. 111–117). (See, the OHHLHC's FY 2010 Announcement of Funding Awards at (77 **Federal Register** 19305–06, March 30, 2012.) To correct an oversight in the application review process, the 2010 AIPAMH application for the Eastern Virginia Medical School (EVMS), 358 Mowbray Arch, P.O. Box

1980, Norfolk, VA 23501–1980, was rescored, which placed it in the funding range. The grant award to EVMS was for the same amount it would have received had it been funded in FY 2010, but it used funds under the Department of Defense and Full-Year Continuing Appropriations Act, 2011.

Dated: April 26, 2013.

Matthew E. Ammon,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 2013–10412 Filed 5–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2012–N094; FF09M29000–112–FXMB123209EAGL0L2]

RIN 1018–AX53

Migratory Birds; Eagle Conservation Plan Guidance: Module 1—Land-Based Wind Energy, Version 2

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that *Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Version 2* is available. The guidance provides recommendations for agency staff and developers to use an iterative process to avoid and minimize negative effects on eagles and their habitats resulting from the construction, operation, and maintenance of land-based, wind energy facilities in the United States.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203–1610, or 703–358–1825.

SUPPLEMENTARY INFORMATION: The Service is charged with implementing many statutes that provide protection to bald and golden eagles, including the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668c), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–12), and the Endangered Species Act (ESA) (16 U.S.C. 1531–44). Under these statutes, the Service implements permit programs for eagles as authorized by implementing regulations in title 50 of the Code of Federal Regulations (CFR). In 2009, the Service promulgated regulations in 50 CFR part 22 authorizing issuance of permits for nonpurposeful take of eagles (74 FR 46836, September 11, 2009). On February 18, 2011, we issued a draft of *The Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy* for public comment (76 FR 9529). We received 124 comments by the end of the comment period on May 19, 2011.

We have considered the public comments received on the draft guidance and now issue the *Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Version 2* (ECPG) to assist potential permit applicants and to promote compliance with BGEPA with respect to such permits. The ECPG describes a process for wind energy developers, in coordination with the Service, to collect and analyze information that could support an application for a programmatic permit to authorize unintentional take of eagles at wind energy facilities. The ECPG provides recommendations for the development of eagle conservation plans (ECPs) to support issuance of eagle programmatic take permits for wind facilities.

Programmatic take permits will authorize limited nonpurposeful mortality and disturbance of eagles at wind facilities, provided that effective offsetting conservation measures that meet regulatory requirements are carried out. To comply with the permit regulations, conservation measures must avoid and minimize take of eagles to the maximum degree practicable, and, for programmatic permits necessary to authorize ongoing take of eagles, advanced conservation practices must be implemented, if available, such that any remaining take is unavoidable.

Further, for eagle management populations that the Service has determined cannot sustain additional mortality, any remaining take must be offset through compensatory mitigation such that the net effect on the eagle management population is, at a minimum, no net loss. The ECPG interprets and clarifies the permit requirements in the regulations at 50 CFR 22.26 and 22.27 and does not impose any binding requirements beyond those specified in the regulations.

The Service recommends that ECPs be developed in five successive stages. The process is intended to be a progressive, increasingly intensive look at potential effects of the development and operation of a particular site and design configuration to eagles. The objectives, recommended actions, and recommended data sources for each of the five stages in the ECP are described in the Stage Overview table in the guidance. The ECPG recommends that project developers or operators employ specific procedures in their site assessments so the data can be combined with that from other facilities in a formal adaptive management process. This adaptive management process is designed to reduce uncertainty about the effects of wind facilities on eagles.

Project developers or operators are not required to use the recommended procedures in this ECPG. However, if different approaches are used, the developer or operator should coordinate with the Service in advance to ensure that approaches being considered will provide comparable data and meet the regulatory requirements. Additionally, Service review time for applications that employ different approaches will likely be longer than if the recommendations in the ECPG were followed.

The ECPG recommends that, at the end of each of the first four stages, project developers or operators determine, in consultation with the Service, which of the following categories the project, as planned, falls into: (1) High risk to eagles, with little opportunity to minimize effects; (2) high or moderate risk to eagles, but with an opportunity to minimize effects; or (3) minimal risk to eagles.

The ECPG is posted online at *http://www.fws.gov/migratorybirds.* You can request a printed copy of the guidance by writing to the address or calling the phone number listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 24, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–10387 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD00000.L16100000.DS0000.LXSSB0010000]

Amended Notice of Intent To Clarify the Scope of Analysis of the Environmental Document and Proposed Plan Amendment in the West Mojave Planning Area, to the Motorized Vehicle Access Element of the California Desert Conservation Area Plan, Inyo, Kern, Los Angeles and San Bernardino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Interior, Bureau of Land Management (BLM) announces its intent to clarify the scope of the *Notice of Intent to Prepare an*

Environmental Document and Proposed Plan Amendment for the West Mojave (WEMO) Plan, Motorized Vehicle Access Element, Inyo, Kern, Los Angeles and San Bernardino Counties, CA, which was published in the **Federal Register** on September 13, 2011 (76 FR 56466). By this notice, the BLM is announcing the beginning of a further, more focused scoping process to solicit public comments and identify issues related to the clarified scope of the West Mojave (WEMO) Route Network Project Environmental Impact Statement (EIS)/Plan Amendment as described under **SUPPLEMENTARY INFORMATION** below.

DATES: This notice initiates public scoping on the clarified scope of the WEMO Route Network Project EIS/plan amendment and concurrent travel management designation planning. Comments must be submitted in writing within 30 days from the publication date of this notice in the **Federal Register.** The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: The public may submit comments on the modified scope of the analysis and related issues, by any of the following methods:

- *Email: cawemopa@blm.gov.*
- *Web site: http://www.blm.gov/ca/st/en/fo/cdd/west_mojave_wemo.*
- *Fax:* 951–697–5299.
- *Mail:* BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, ATTN: West Mojave Route Network Project, Moreno Valley, CA 92553–9046

Documents relevant to this proposal may be examined at the California Desert District Office or Web site (address above), or the BLM's California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Edythe Seehafer, telephone 760–252–6021; address Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311; email *cawemopa@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In January 2011, the U.S. District Court for the Northern District of California partially remanded the 2006 WEMO Plan Amendment Record of Decision (ROD) to the BLM and directed the BLM to amend the California Desert Conservation Area (CDCA) Plan and reconsider route designation throughout the WEMO area, as well as other specified issues in the WEMO Plan (*Center for Biological Diversity* v. *US Bureau of Land Management* Order Re: Remedy (N.D. Cal. Jan 28, 2011)). By court order, the BLM must issue a revised decision by March 31, 2014. The September 13, 2011 Notice of Intent (NOI) invited comments on the proposed scope and content of the environmental document to address the court's issues related to the 2006 WEMO ROD.

The public scoping process for this action has been utilized to determine relevant issues, impacts, and possible alternatives that could influence the scope of the environmental analysis, and guide the entire process from plan decision-making to route designation review in order to comply with the court order. The BLM conducted two scoping meetings in Ridgecrest and Barstow, on September 27 and 29, 2011 respectively. The BLM asked for comments on the issues to be addressed, motor vehicle access amendment alternatives to be considered, decision criteria for route designation, the best approach to integrate recent BLM transportation management guidance into the document, and how to address both plan-level and implementation-level decisions. As a result of initial scoping, the BLM subsequently held eight working group meetings in February and March of 2012 to collect additional travel management input on issues related to planning and implementation for route designation in specific geographic subregions within the WEMO area.

The original NOI stated that the plan amendment would:

1. Update and amend the Motorized Vehicle Access Element of the CDCA Plan. The NOI requested input on those portions of the Element to be amended, including to reflect current management policy regarding access management. The plan amendment proposes to eliminate the ''existing routes'' language in the CDCA Plan. This language currently constrains the development of a travel network in the WEMO area.

2. Identify and analyze alternatives for amending the Motorized Vehicle Access Element of the CDCA Plan. The NOI indicated that subsequently, concurrently, or in a combination of both, additional environmental analysis would address current route designation within the WEMO sub-regional areas. This analysis would result in new decisions for each sub-regional area within the WEMO plan area that would either retain or modify, in whole or in part, current route designations.

3. Identify processes, decision criteria, and related issues for designating travel routes within sub-regional areas of the WEMO plan area. The NOI identified preliminary decision criteria and requested input on issues and concerns, and best science and technology to establish viable networks within each subarea.

Clarifications to the original NOI as a result of scoping include the following:

1. The appropriate analytical document for the plan amendment has been determined to be an EIS.

2. This plan amendment also proposes to modify Stopping/Parking/Camping guidelines and other potential area-wide impact minimization strategies in addition to ''existing routes'' language.

3. The BLM has determined that it would be in the best interest of public land management to evaluate concurrently the plan amendments and the activity planning that would adopt route designations and implementation strategies.

4. In response to the court order BLM will establish a consistent baseline for route designation.

5. Consistent with current guidance, the plan amendment proposes to adopt Travel Management Areas and broad goals for these areas to provide the basis for concurrent travel management activity plans.

6. The activity plans will designate specific travel routes and trails within the travel management areas as part of the site-specific implementation planning, and will include consideration of both public (casual use) and other access needs and opportunities on public lands.

7. This document will amend the CDCA Plan Motor Vehicle Access Element as it pertains to the West Mojave Planning area. Amendment and activity plan changes will update and augment the 2006 West Mojave Plan, through the replacement of Section 2.2.6, updates of Planning and Regulatory Framework Section 3.1, Affected Environment Sections 3.5, affected impact analyses, strategies provided in the activity plans, and elsewhere as appropriate.

8. The BLM generally identified issues of concern in the original Notice. The following post-2006 ROD issues also will be considered: New critical habitat, designation of the Old Spanish National Historic Trail, new wilderness areas, consideration of lands with wilderness characteristics, changes to access from major rights-of-way and other large plan amendment proposals

and decisions, and the proposed transfer of management to the military of the Johnson Valley OHV Open Area. Several issues were specifically identified by the court which will be addressed in the document, including soils, unusual plant assemblages, riparian and water resources, cultural resources, grazing, air quality in open areas, cumulative effects, and mitigation. The BLM will evaluate identified issues to be addressed in the plan amendment, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment and associated activity plans;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Scoping Report or the draft EIS as to why an issue was placed in category two or three. An updated inventory of lands with wilderness characteristics for public lands in the plan area will be completed for analysis in the EIS. The public is also encouraged to help identify any management questions and concerns that should be addressed in the clarified scope of the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7, 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2013–10374 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PVE–UPARR–12049; PPWOSLAD00, PUA00UA08.GA0000]

Proposed Information Collection; Urban Park and Recreation Recovery Program Grants

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by July 1, 2013.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0048—Urban Park and Recreation Recovery Program'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Elisabeth Fondriest, Recreation Grants Chief, State and Local Assistance Programs Division at 202–354–6916; or 1849 C Street NW., (2225), Washington, DC 20240 (mail); or *elisabeth_fondriest@nps.gov* (email). Please include ''1024–0048'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Urban Park and Recreation Recovery (UPARR) Act (16 U.S.C. 2501 et seq.) was passed as Title X of the National Parks and Recreation Act of 1978. The UPARR Act authorized the Secretary of the Interior to establish a grant program to help economically distressed urban areas improve recreation opportunities for their residents.

We administer the UPARR program in accordance with regulations at 36 CFR 72 and the UPARR Grant Manual. These (1) Explain the policies to be followed for awarding grants; (2) list the requirements and criteria to be met for each type of grant and discretionary eligibility; (3) discuss fundable uses and limitations; (4) explain how proposals will be selected and funding; and (5) describe the application process and administrative procedures for awarding grants. The three types of grants available under the program are:

- Rehabilitation—renovate or redesign existing close-to-home recreation facilities.
- Innovation—specific activities that either increase recreation programs or improve the efficiency of the local government to operating existing programs.
- Planning—development of a Recovery Action Program plan.

The information collection requirements associated with the UPARR Program are currently approved under three OMB control numbers, all of which expire on October 31, 2013. During our review for this renewal, we identified some additional requirements that need OMB approval. In this revision of 1024–0048, we are including all of the information collection requirements for the UPARR Program. If OMB approves this revision, we will discontinue OMB Control Numbers 1024–0028 and 1024–0089. Congress has not appropriated funds for new UPARR grants since FY 2002. We are not currently accepting applications, and there are no open grants for which performance reports must be submitted. However, we still receive requests for conversion of properties improved or developed with UPARR grants through FY 2002 to other than public recreation uses. In anticipation of future funding, we are requesting OMB approval for the information collection requirements. With the exception of requests for conversions of use, we are estimating one response as a placeholder for each of the requirements. Following are the information collection requirements for the UPARR Program:

(1) *Recovery Action Program:* In accordance with 36 CFR 72.10–13, any eligible jurisdiction or discretionary applicant desiring to apply for a grant must develop and submit for NPS approval, a local Recovery Action Program (RAP). The RAP documents the recreation needs of the community and is linked to the objectives, needs, plans, and institutional arrangements of the community. The RAP consists of two sections, which are the Assessment and the Action Plan.

The Assessment describes the existing park and recreation system; issues and problems; goals and objectives. The Assessment summarizes the entire system including: operation and maintenance; employment and training; programs and services; rehabilitation of existing facilities; and the need for new facilities. The six parts of the Assessment include: Context; physical issues; rehabilitation issues; service issues; management issues; and conclusions, implications, and issues.

The Action Plan is a clear statement of the community's specific objectives, priorities and implementation strategies in relation to the intent of the UPARR Program and the local government's overall recreation system goals. Citizen involvement in the development of the Action Plan is required and may include surveys, hearings, meetings, and/or consultation, as appropriate, which is essential in the development of goals, objectives and the setting of project priorities. The Action Plan identifies: the goals for the system; strategies to address national and local concerns, recommendations; program priorities and implementation schedule; and an evaluation of and update to the Action Program.

In accordance with 36 CFR 72.30, applicants must have an approved RAP on file with the appropriate NPS Regional Office prior to applying for Rehabilitation or Innovation grants. Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's RAP.

(2) *Recovery Action Program Grant Applications:* In accordance with 36 CFR 72.52, ranking and selection for funding of Recovery Action Program grants will be initiated on the basis of a full application, preparation of which will be assisted through meetings with NPS regional staff. The following documents are required to be submitted with the Recovery Action Program Grant Application: OMB Standard Forms such as the SF–424, the RAP Grant Agreement (Form #10–911), narrative statements with a description and scope of the planning product(s) to be developed, a project budget, and a work schedule.

(3) *Preapplication for Rehabilitation and Innovation Grants:* In accordance with 36 CFR 72.53, a preapplication procedure is used to reduce the amount of time and documentation needed for a full application, and to foster the competitive aspects of the UPARR Program. The preapplication must include those items as set forth in the Preapplication Handbook, to include: a letter of transmittal, SF–424, proposal description statement, a narrative describing how the project meets the selection criteria, maps, photographs (for construction projects), cost estimates, and pass through certifications (if applicable). The application must describe the problem addressed by the proposal, including existing conditions, the reason for the problem or why the condition exists, and what the UPARR assistance would do to alleviate the problem or condition. Discretionary applicants must also submit a narrative statement, signed by the chief executive of the applicant jurisdiction, explaining and quantifying the degree of physical and economic distress in the community must be included in each preapplication.

(4) *Full Application—Rehabilitation and Innovation Grants:* In accordance with 36 CFR 72.54, once a Rehabilitation or Innovation proposal has received a tentative grant offer, applicants will be responsible for completing a full application, which addresses compliance with OMB Circulars A–102 and A–87, as well as other applicable Federal laws and regulations such as environmental and historic preservation laws. A list of specific Acts and Executive Orders is in 36 CFR 72.56. A grant will not be approved until the applicant has completed a full application, which is due 120 days from the date of the grant offer.

Grant respondents must also complete and sign the UPARR Program Grant Rehabilitation and Innovation Agreement (currently approved under 1024–0089; Form #10–912). We use this information to document the obligations assumed by the respondent through its acceptance of Federal assistance including the rules and regulations applicable to the conduct of a project under the UPARR Act and any special terms and conditions to the project established by the NPS and agreed to by the respondent. This information also obligates the Federal government to provide grants up to the designated amount for eligible costs incurred on the project on the basis of information and estimates contained in the proposal.

(5) *Amendments* (Currently approved under 1024–0089): Grantees must request prior written approval from NPS for an amendment to a project if the revision causes substantial changes in the scope, objective, or work elements such as the project period. To alter the grant agreement, grantees must complete and sign the Amendment to UPARR Grant Agreement (Form #10–915). The request must also include an SF–424, an explanation of and justification for the change(s), and if applicable, new budget information.

(6) *Performance Reports* (Currently approved under 1024–0028): The UPARR Program Project Performance Report details the annual status of the projects and any changes that need to be implemented. We use this information to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work. Performance Reports are needed to show quarterly or annual progress reports on the physical completion per percentage of each grant, financial expenditures to date, budget revisions if needed, work planned for the next year, and any additional information pertinent for grant completion.

(7) *Conversion of Use* (Currently approved under 1024–0048): In accordance with Section 1010 of the UPARR Act and as codified in 36 CFR 72.72, no property improved or developed with UPARR assistance can be converted to other than public recreation uses without the approval of the NPS. A conversion will only be approved if it is found to be in accord with the current local park and recreation Recovery Action Program and/or equivalent recreation plans and only upon such conditions as deemed necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness. To request a conversion, the grantee must submit the following documentation: an amendment request, a narrative statement comparing the site to be converted with the proposed replacement site addressing factors such as physical size, location, carrying capacity, and facilities; maps (location, site, and Section 1010 boundary); and evidence of the grantee's control and tenure over the replacement site.

(8) *Recordkeeping Requirements:* In accordance with 36 CFR 72.60(b), applicants must maintain adequate financial records to support all expenditures or costs covered by a Recovery Action Program, Rehabilitation, or Innovation project grant, as specified in OMB Circular A–87 and OMB Circular A–102 for a period of 3 years after final payment on a project. The records must be retained beyond the 3-year period if audit findings have not been resolved.

II. Data

OMB Control Number: 1024–0048.

Title: Urban Park and Recreation Recovery Program Grants, 36 CFR 72.

Service Form Numbers: 10–911, 10–912, and 10–915.

Type of Request: Revision of a currently approved collection.

Description of Respondents: State Governments; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Recovery Action Program	1	1	80	80
Recovery Action Program Grant Applications	1	1	3.5	4
Preapplication for Rehabilitation or Innovation Grants	1	1	10	10
Final Application for Rehabilitation or Innovation Grants	1	1	10.5	11
Grant Amendments	1	1	3.5	4
Performance Reports	1	1	1	1
Conversion of Use Request	1	5	25	125
Recordkeeping Requirements	1	1	2	2
Totals	11	15		237

Estimated Annual Nonhour Cost Burden: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 26, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–10362 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–CUVA–12176; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Availability of the Final Trail Management Plan/Final Environmental Impact Statement for Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Final Trail Management Plan/Environmental Impact Statement (TMP/EIS) for Cuyahoga Valley National Park, Ohio.

DATES: The Final TMP/EIS will remain available for public review for 30 days following the publication of the Notice of Availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Copies of the TMP/EIS will be available to the public by request by writing to the Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141. The document is also available on the internet at the NPS Planning, Environment, and Public Comment Web site at *http://www.parkplanning.nps.gov/cuyahogatrailplan.*

FOR FURTHER INFORMATION CONTACT: Superintendent Stan Austin, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44140, telephone (440) 546–5903.

SUPPLEMENTARY INFORMATION: We, the NPS, announce the availability of the Final TMP/EIS for Cuyahoga Valley National Park, Ohio. This plan will guide the management of trails and associated trail facilities in Cuyahoga Valley National Park for the next 15 years. The Final TMP/EIS considers eight draft conceptual alternatives—a no-action and seven action alternatives, including the NPS preferred alternative. The Final TMP/EIS assesses impacts to water resources, soils, vegetation, wildlife, cultural resources, socioeconomics, visitor use and experience, and park operations.

The preferred alternative in this TMP/EIS provides a vision for trails management that best meets the goals of the plan and minimizes impacts to the resources of Cuyahoga Valley National Park. The preferred alternative (Alternative 5) combines trail elements and facilities from the other action alternatives that the NPS believes would best fit Cuyahoga Valley National Park. The preferred alternative includes elements common to all of the action alternatives, and includes the addition of 37 miles of trails, including 10 miles of trails for off-road bicycle use, increased facilities for trail-side camping, access for river paddling and parking areas, and guidance for the restoration and sustainability of the trail system for the future.

Of the actions that are considered as part of each of the action alternatives, and adopted as part of the preferred alternative, Cuyahoga Valley National Park will establish Sustainable Trail Guidelines to guide the planning and management related to the restoration of existing trails, planning and design for new trails and trail facilities, and maintenance and best management practices. The Guidelines will serve as the Standard Operating Procedure for trail management in Cuyahoga Valley National Park during implementation of the selected alternative of the Trail Plan.

The NPS will make no decision on the Final TMP/EIS until after the expiration of the 30-day period announced above.

Dated: March 28, 2013.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2013–10422 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[A10–1412–0001–009–01–0–4, 8453000; OMB Control Number 1006–0005]

Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428 (OMB Control Number 1006–0005).

DATES: OMB has up to 60 days to approve or disapprove this information collection request, but may respond after 30 days; therefore, public comments must be received on or before June 3, 2013.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *oira_submission@omb.eop.gov*. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. Please reference OMB Control Number 1006–0005 in your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee, Bureau of Reclamation, at (303) 445–2897. You may also view the Information Collection Request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

II. Changes to the RRA Forms and Their instructions

The changes made to the currently approved RRA forms and the corresponding instructions are of a formatting or editorial nature, and are designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for completing the forms, and clarifying the information that is required to be on the forms. The proposed revisions to the RRA forms will be effective in the 2014 water year.

III. Data

OMB Control Number: 1006–0005.

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Form Number: Form 7–2180, Form 7–2180EZ, Form 7–2181, Form 7–2184, Form 7–2190, Form 7–2190EZ, Form 7–2191, Form 7–2194, Form 7–21TRUST, Form 7–21PE, Form 7–21PE–IND, Form 7–21FARMOP, Form 7–21VERIFY, Form 7–21FC, Form 7–21XS, Form 7–21XSINAQ, Form 7–21CONT–I, Form 7–21CONT–L, Form 7–21CONT–O, and Form 7–21INFO.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Annual Total Number of Respondents: 14,002.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 14,282.

Estimated Total Annual Burden on Respondents: 10,472 hours.

Estimated Completion Time Per Respondent: See table below:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	3,596	3,668	3,668
Form 7–2180EZ	45	374	381	286
Form 7–2181	78	1,051	1,072	1,394
Form 7–2184	45	32	33	25
Form 7–2190	60	1,618	1,650	1,650
Form 7–2190EZ	45	96	98	74
Form 7–2191	78	777	793	1,031
Form 7–2194	45	4	4	3
Form 7–21PE	75	139	142	178
Form 7–21PE–IND	12	4	4	1
Form 7–21TRUST	60	700	714	714
Form 7–21VERIFY	12	5,081	5,183	1,037
Form 7–21FC	30	214	218	109
Form 7–21XS	30	144	147	74
Form 7–21FARMOP	78	172	175	228
Totals	.....	14,002	14,282	10,472

IV. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (77 FR 57588, September 18, 2012). One substantive comment was received. This comment stated the wording of one sentence in the ''General Information About the RRA Forms'' (Form 7–21INFO) should be changed to indicate that Reclamation reviews certain trusts, not all trusts. The requirements associated with section 214 of the RRA and the Acreage Limitation Rules and Regulations necessitates Reclamation's review of all trusts in order to determine the applicable entitlements and water rate for each trust that receives Reclamation irrigation water on the land directly or indirectly owned or leased by the trust. Therefore, the specific verbiage in Form 7–21INFO will remain unchanged and reflect required review of all trusts.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 26, 2013.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2013–10359 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[A10–1412–0001–009–01–0–4, 8453000; OMB Control Number 1006–0023]

Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426 (OMB Control Number 1006–0023).

DATES: OMB has up to 60 days to approve or disapprove this information collection request, but may respond after 30 days; therefore, public comments must be received on or before June 3, 2013.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *oira_submission@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. Please reference OMB Control Number 1006–0023 in your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee, Bureau of Reclamation, at (303) 445–2897. You may also view the Information Collection Request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

Trust review—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. We may extend the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents when we become aware of trusts with a relatively small landholding (40 acres or less in districts subject to the prior law provisions of Federal reclamation law, 240 acres or less in districts subject to the discretionary provisions of Federal reclamation law). If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the public entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage

limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to religious or charitable organizations—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion.

II. Changes to the RRA Forms and Their Instructions

The changes made to the currently approved RRA forms and the corresponding instructions are of an editorial nature, and are designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for completing the forms, and clarifying the information that is required to be on the forms. The proposed revisions to the Trust Information Sheet also include clarification in the form's subtitle of the 40-acre and 240-acre RRA forms submittal thresholds applicable to prior law districts and discretionary provisions districts, respectively. The proposed revisions to the RRA forms will be effective in the 2014 water year.

III. Data

OMB Control Number: 1006–0023.

Title: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

Form Number: Form 7–2536, Form 7–2537, Form 7–2565, and Form 7–2578.

Frequency: Generally, these forms will be submitted only once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Annual Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 72 hours.

Estimated Completion Time per Respondent: See table below:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited Recipient Identification Sheet	5	175	175	15
Trust Information Sheet	5	150	150	13
Public Entity Information Sheet	15	100	100	25
Religious or Charitable Identification Sheet	15	75	75	19
Totals		500	500	72

IV. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (77 FR 57586, September 18, 2012). No comments were received.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 26, 2013.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2013–10357 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[A10–1412–0001–009–01–0–4, 8453000]

OMB Control Number 1006–0006; Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428 (OMB Control Number 1006–0006).

DATES: OMB has up to 60 days to approve or disapprove this information collection request but may respond after 30 days; therefore, public comments must be received on or before June 3, 2013.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *oira_submission@omb.eop.gov.* A copy of your comments should be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. Please reference OMB Control Number 1006–0006 in your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee, Bureau of Reclamation, at (303) 445–2897. You may also view the Information Collection Request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This information allows us to establish water user compliance with Federal reclamation law.

II. Changes to the RRA Forms and Their Instructions

The changes made to the currently approved RRA forms and the corresponding instructions are of an editorial nature, and are designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for completing the forms, and clarifying the information that is required to be on the forms. The proposed revisions to the RRA forms will be effective in the 2014 water year.

III. Data

OMB Control Number: 1006–0006.

Title: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Form Number: Form 7–21SUMM–C and Form 7–21SUMM–R.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Annual Total Number of Respondents: 182.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 228.

Estimated Total Annual Burden on Respondents: 9,120 hours.

Estimated Completion Time per Respondent: See table below.

Estimated non-hour cost burden: $159,660.

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	172	215	8,600
7–21SUMM–R and associated tabulation sheets	40	10	13	520
Totals		182	228	9,120

IV. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (77 FR 57587, September 18, 2012). No comments were received.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 26, 2013.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2013–10358 Filed 5–1–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–792]

Certain Static Random Access Memories and Products Containing Same; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the remand initial determination (''RID'') issued by the presiding administrative law judge (''ALJ'') on February 25, 2013.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 28, 2011, based on a complaint filed by Cypress Semiconductor Corporation of San Jose, California (''Cypress''). 76 FR 45295 (July 28, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,534,805; 6,651,134; 6,262,937 and 7,142,477. The notice of investigation named the following entities as respondents: GSI Technology, Inc. of Sunnyvale, California (''GSI''); Alcatel-Lucent of Paris, France (''Alcatel-Lucent''); Alcatel-Lucent USA, Inc. of Murray Hill, New Jersey (''Alcatel-Lucent USA''); Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (''Ericsson LM''); Ericsson, Inc. of Plano, Texas (''Ericsson''); Motorola Solutions, Inc. of Schaumburg, Illinois (''Motorola''); Motorola Mobility, Inc. of Libertyville, Illinois (''MMI''); Arrow Electronics, Inc. of Melville, New York (''Arrow''); Nu Horizons Electronics Corp. of Melville, New York (''Nu Horizons''); Cisco Systems, Inc. of San Jose, California (''Cisco''); Hewlett Packard Company/Tipping Point of Palo Alto, California (''HP''); Avnet, Inc. of Phoenix, Arizona (''Avnet''); Nokia Siemens Networks US, LLC of Irving, Texas (''Nokia US''); Nokia Siemens Networks B.V. of Zoetermeer, Netherlands (''Nokia''); and Tellabs of Naperville, Illinois (''Tellabs''). The Office of Unfair Import Investigations is not a party to this investigation.

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: Alcatel-Lucent, Alcatel-Lucent USA, Ericsson, Arrow, Nu Horizons, Nokia US, and Nokia. The following respondents were terminated from the investigation based upon grant of summary determination of no violation of section 337: MMI, HP, Motorola, Tellabs, and Ericsson LM. The following respondents remain in the investigation: GSI, Cisco, and Avnet (collectively, ''Respondents'').

On October 25, 2012, the ALJ issued his final ID (''ID''), finding no violation of section 337 by the remaining respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over the Respondents. ID at 8. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. *Id.* The ALJ, however, found that the accused products do not infringe the asserted patent claims. *See* ID at 16, 24, 39, and 55. The ALJ also found that Cypress failed to establish the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2) for failure to establish the technical prong of the domestic industry requirement. *See* ID at 20, 31, 45, and 58. The ALJ did not consider the validity or enforceability of the asserted patents despite Respondents' assertion in both their pre-hearing and post-hearing briefs that the asserted patents are invalid and unenforceable. *See* ID at 20, 31, 45–46, and 59.

On November 7, 2012, Cypress filed a petition for review of the ID. That same day, Respondents filed a contingent petition for review. On November 15, 2012, the parties filed responses to the petition and contingent petition for review.

On December 21, 2012, the Commission determined to review the ID in its entirety (without requesting further briefing) and remanded the investigation to the ALJ to make findings on invalidity and unenforceability, issues he did not rule on. On February 25, 2012, the ALJ issued his RID, finding that the asserted patents are enforceable and not invalid.

On March 11, 2013, Respondents filed a petition for review of the RID, challenging the ALJ's findings that the asserted patents are enforceable and not invalid. On March 19, 2013, Cypress filed a response to the petition for review.

Having examined the record of this investigation, including the ALJ's final ID and RID, the petitions for review, and the responses thereto, the Commission has determined to review the RID in part, *i.e.,* with respect to validity. The final ID remains under Commission review.

The Commission declines Respondents' request to take judicial review of the on-going reexamination proceedings at the United States Patent and Trademark Office regarding the '805 patent and admit filings in that case into evidence in this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: April 26, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–10354 Filed 5–1–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 3, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR is to maintain PRA authorization for regulations that provide guidance on the content, frequency, and manner of certain disclosures the Employee Retirement Income Security Act of 1974, as Amended requires employee benefit plans periodically to furnish to plan participants and certain specified plan beneficiaries. Benefit plans use Summary Plan Descriptions, Summaries of Material Modifications, and Summaries of Material Reductions to make the disclosures.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0039. The current approval is scheduled to expire on April 30, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 27, 2012 (77 FR 70828).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended.

OMB Control Number: 1210–0039.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,984,011.

Total Estimated Number of Responses: 106,376,000.

Total Estimated Annual Burden Hours: 260,000.

Total Estimated Annual Other Costs Burden: $295,771,000.

Dated: April 18, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–10373 Filed 5–1–13; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 3, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this

notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Interior, Bureau of Safety and Environmental Enforcement (N1–473–12–2, 8 items, 4 temporary items). Records documenting policy development, agency origin and organization, and decisions and activities of senior executives. Proposed for permanent retention are significant records relating to policy, rulemaking, congressional activities, and public relations.

2. Department of Justice, Office of Tribal Justice (DAA–0060–2011–0016, 6 items, 3 temporary items). Files of interagency working groups and subject files pertaining to issues and events affecting tribes. Proposed for permanent retention are records relating to requests for Federal jurisdiction, consultations with tribes, and records of the Tribal Nations Leadership Council.

3. Department of Labor, Employment and Training Administration (DAA–0369–2013–0002, 5 items, 4 temporary items). Master files of electronic information systems used for foreign labor certification applications and other records related to the same program. Proposed for permanent retention are master files of an electronic information system used for statistical information on foreign labor certification applications.

4. Department of Transportation, Surface Transportation Board (DAA–0134–2013–0012, 1 item, 1 temporary item). Agency-wide working papers.

5. Consumer Financial Protection Bureau, Office of Minority and Women Inclusion (N1–587–12–10, 15 items, 14 temporary items). Records include memorandums, recruitment files, and administrative records. Proposed for permanent retention are reports to Congress on Bureau diversity actions.

6. Consumer Financial Protection Bureau, Agency-wide (N1–587–12–12, 4 items, 4 temporary items). Administrative project management records.

7. National Archives and Records Administration, Research Services (N2–60–13–1, 1 item, 1 temporary item). Department of Justice litigation case files covering Federal building space, dated pre-1945. Records were accessioned to the National Archives but are not of sufficient historical value to warrant continued preservation.

8. National Archives and Records Administration, Research Services (N2–60–13–2, 1 item, 1 temporary item). Department of Justice litigation case files covering the Weeks Forestry Act, dated pre-1940. Records were accessioned to the National Archives but are not of sufficient historical value to warrant continued preservation.

9. National Archives and Records Administration, Research Services (N2–60–13–3, 1 item, 1 temporary item). Department of Justice litigation case files covering the Fair Trade Act, dated pre-1945. Records were accessioned to the National Archives but are not of sufficient historical value to warrant continued preservation.

10. National Archives and Records Administration, Research Services (N2–60–13–4, 1 item, 1 temporary item). Department of Justice litigation case files covering Federal building sites, dated pre-1945. Records were accessioned to the National Archives but are not of sufficient historical value to warrant continued preservation.

Dated: April 24, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–10427 Filed 5–1–13; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Meeting; Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 9–10, 2013, 11545 Rockville Pike, Rockville, Maryland.

Thursday, May 9, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

1:00 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–3:00 p.m.: Next Generation Nuclear Plant (NGNP) Key Licensing Issues (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding key licensing issues pertaining to the NGNP project.

3:15 p.m.–4:45 p.m.: Generic Issue (GI)-189, ''Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion during a Severe Accident'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the closure of GI–189, ''Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion during a Severe Accident.''

4:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, May 10, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10:00 a.m.: Consequential Steam Generator Tube Rupture (C–SGTR) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of an enhanced risk-assessment procedure for C–SGTR.

10:15 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:45 a.m.–12:00 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

6:30 p.m.–7:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (76 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: April 26, 2013.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013–10431 Filed 5–1–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69453; File No. SR–OPRA–2012–07]

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend Section 3.5 of the OPRA Plan

April 25, 2013.

I. Introduction

On December 21, 2012, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SE.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

amendment would revise a provision that describes certain circumstances in which a national securities exchange must cease to be a Member of OPRA. The proposed OPRA Plan amendment was published for comment in the **Federal Register** on January 22, 2013.[4] The Commission received no comment letters in response to the Notice.

This order approves the proposed OPRA Plan amendment.

II. Description of the Proposal

The purpose of the proposed OPRA Plan amendment is to revise certain language contained in Section 3.5 of the OPRA Plan. Section 3.5 currently provides, in part, as follows: ''The membership status [in OPRA] of a Member shall terminate effective as of . . . the last day of the calendar quarter in which the Member has ceased maintaining a market for the trading of securities option contracts.'' [5] Under the current language, a Member that ceases to maintain a market for the trading of securities option contracts late in a calendar quarter would have little or no time in which to resume maintaining such a market if it wanted to remain a Member of OPRA.

OPRA proposes to amend Section 3.5 so that a national securities exchange that ceases to maintain a market for the trading of options may remain a Member of OPRA for an additional calendar quarter after the quarter in which it stops maintaining a market in options.

III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act [7] and Rule 608 thereunder [8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system. The proposed change to Section 3.5 of the OPRA Plan is designed to allow additional time within which an existing OPRA Member may maintain its membership in OPRA if the Member stops maintaining a market in securities. Specifically, the amendment would provide an exchange that temporarily ceases to maintain a market for the trading of options with additional flexibility with respect to the date by which it must resume maintaining a market for the trading of options or lose its membership status in OPRA. The Commission believes that OPRA's proposal is consistent with Section 11A of the Act [9] and Rule 608 thereunder.[10]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] that the proposed OPRA Plan amendment (SR–OPRA–2012–07) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10351 Filed 5–1–13; 8:45 am]

BILLING CODE 8011–01–P

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The eleven participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release No. 68655 (January 15, 2013), 78 FR 4505 (''Notice'').

[5] OPRA is organized as a limited liability company, and the OPRA Plan is the Limited Liability Company Agreement of OPRA. The OPRA Plan therefore uses the vocabulary typically used in Limited Liability Company Agreements, and therefore refers to the national security exchanges that are participants in OPRA as ''Members,'' and to their participation in OPRA as ''membership.''

[6] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69465; File No. SR–Phlx–2013–40]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Strategy Fee Caps

April 26, 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 17, 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 Strategy Fee Caps.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on April 18, 2013.

The text of the proposed rule change is available on the Exchange's Web site 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 purpose of this filing is to amend the Strategy Fee Caps which are currently located in Section II, entitled ''Multiply Listed Options.'' [3] Today, the Exchange caps certain dividend, merger, short stock interest and reversal and conversion floor option transactions. The Exchange is proposing to reformat the manner in which the caps are presented by first defining each strategy and then creating a table to display the caps. The Exchange also proposes to also amend the reversal and conversion cap.

First, the Exchange proposes to relocate the definitions of the various

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

strategies, which are currently in Section II, and define them under a heading ''Strategies and Definitions.'' Today, the Exchange defines a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. The Exchange defines a merger strategy as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. The Exchange defines a short stock interest strategy as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. The Exchange defines reversal and conversion strategies as transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. The Exchange is not proposing to amend the definitions which are currently in the rule text of the Pricing Schedule. The Exchange is proposing to simply relocate these definitions.

Today, Specialist,[4] Market Maker,[5] Professional,[6] Firm [7] and Broker-Dealer [8] floor option transaction charges in Multiply Listed Options are capped at $1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class, and option transaction charges in Multiply Listed Options are capped at $750 for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest and reversal and conversion strategies combined are further capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''). Reversal and conversion strategy executions are not included in the Monthly Strategy Cap for a Firm. To qualify for a strategy fee cap, the buy and sell side of a transaction must originate from the Exchange floor.

The Exchange will continue to offer a fee cap of $1,250 for dividend, merger and short stock interest strategies that are executed on the same trading day in the same options class when such members are trading in their own proprietary account on the Exchange's trading floor. With respect to the reversal and conversion fee cap, the Exchange will amend the fee cap to: (i) Lower the $750 fee cap to $700; and (ii) continue to offer such a rebate on floor options transactions executed on the same trading day in the same options class, but will not require transactions to be in a member's own proprietary account, as is the case today.

Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest and reversal and conversion strategies combined will continue to be capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''), except for Firm. As is the case today, reversal and conversion strategy executions will not be included in the Monthly Strategy Cap for a Firm. The Exchange proposes to note for purposes of clarity in the Pricing Schedule that, as is the case today, reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap.[9]

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that creating a strategy definition section in the Pricing Schedule and relocating all of the definitions to this section is reasonable, equitable and not unfairly discriminatory because the definitions are not being amended, but rather simply grouped together for ease of reference. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to display the strategy fee caps in a table format for ease of reference. The Exchange is not amending the dividend, merger and short stock interest fee caps nor is the Exchange amending the Monthly Strategy Cap, but will display those strategy fee caps in a table format on the Pricing Schedule.

The Exchange believes that amending the reversal and conversion strategy to offer a lower fee cap and eliminate the requirement that the transaction must be executed in a member's own proprietary account is reasonable because the Exchange believes that a greater number of market participants will be incentivized to transact a greater number of reversal and conversion strategies on the Exchange's trading floor to benefit from the lower fee cap and ability to apply all reversal and conversion strategies executed on the same trading day in the same options class on the Exchange's trading floor. The Exchange believes that offering a lower fee cap for reversal and conversion strategies and not requiring that the transactions be executed in a member's own proprietary account, as compared to other dividend, merger and short stock interest strategy executions which have a higher cap ($1,250) and require members to execute transactions in their own proprietary accounts, is reasonable because the Exchange desires to specifically incentivize market participants to transact reversal and conversion strategies and believes this proposal offers market participants competitive fee caps. In addition, the Exchange believes that it is reasonable to continue to require that all fee cap strategies, which combine executions for purposes of the Monthly Strategy Cap, must be traded in the member's

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[6] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[7] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[8] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

own proprietary account. The Exchange believes that it reasonable to continue to impose the same requirements as today on all members for purpose of qualifying for the Monthly Strategy Cap. In addition, other options exchanges offer similar fee caps, namely NYSE Arca, Inc. (''NYSE Arca''),[12] NYSE Amex, Inc. (''NYSE Amex'') [13] and the Chicago Board Options Exchange, Incorporated (''CBOE'') [14] for strategies.

The Exchange believes that amending the reversal and conversion strategy to offer a lower fee cap and eliminate the requirement that the transaction must be executed in a member's own proprietary account is equitable and not unfairly discriminatory because the Exchange is proposing to continue to offer the reversal and conversion fee cap to all market participants, except for Customers.[15] All market participants that are assessed transaction fees will have an opportunity to cap floor option transaction charges in Multiply Listed Options. The Exchange believes that offering a lower fee cap for reversal and conversion strategies and not requiring that the transactions be executed in the member's own proprietary account, as compared to other dividend, merger and short stock interest strategy executions which have a higher cap ($1,250) and require members execute transactions in their own proprietary accounts, is equitable and not unfairly discriminatory because the Exchange believes this incentive is necessary to create further trading opportunities for members on the Exchange's trading floor and is being offered uniformly to all floor members. The Exchange believes a similar incentive is not necessary for dividend, merger and short stock interest strategies. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to require that all fee cap strategies, which combine executions for purposes of the Monthly Strategy Cap, must be traded in a member's own proprietary account. The Exchange is not amending the calculation of the Monthly Strategy Cap which will continue to impose the same requirements on members for all strategies to qualify for the Monthly Strategy Caps.

The Exchange's proposal to continue to exclude Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to $75,000 per month. The Exchange would include floor option transaction charges related to reversal and conversion strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, reversal and conversion transactions are excluded from the Monthly Market Maker Cap.[16] For the reasons described above, the Exchange believes including reversal and conversion strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.[17]

The Exchange believes that its proposal to amend the applicability of the strategy fee caps to orders originating from the Exchange floor is reasonable because members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions would defray brokerage costs associated with executing strategy transactions and continue to incentivize members to utilize the floor for certain executions.[18] The Exchange believes that its proposal to amend the applicability of the fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today, the fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

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 because the proposed changes apply uniformly to all members that incur transaction charges.[19] Further, the proposed changes are substantially similar to those found on other options exchanges; therefore, the Exchange believes the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, floor members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee caps defray brokerage costs associated with executing strategy transactions. Also, requiring that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

[12] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[13] *See* NYSE Amex Options Fee Schedule.

[14] *See* CBOE's Fees Schedule.

[15] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)). Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[16] The reversal and conversion strategy executions are excluded from the Monthly Market Maker Cap. *See* Section II of the Pricing Schedule.

[17] Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). *See* Section II of the Pricing Schedule.

[18] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* proposed rule text in Section II of the Pricing Schedule.

[19] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

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.[20] 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–Phlx–2013–40 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-2013–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–40 and should be submitted on or before May 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69464; File No. SR–NASDAQ–2013–036]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV

April 26, 2013.

I. Introduction

On February 21, 2013, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV (''Fund''). On March 7, 2013, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing. The Commission published for comment in the **Federal Register** notice of the proposed rule change, as modified by Amendment No. 2, on March 13, 2013.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares.[4] The Exchange deems the Shares to be equity securities, rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[5]

The Shares will be offered by the First Trust Exchange Traded Fund IV (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an investment company.[6] First Trust Advisors L.P. is the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Shares (''Distributor''). The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian and transfer agent to the Fund (''Custodian''). The Adviser is affiliated with the Distributor, a broker-dealer. As required by Nasdaq Rule 5735(g),[7] the Adviser has implemented a firewall with respect to its broker-dealer affiliate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69072 (March 7, 2013), 78 FR 16006 (''Notice'').

[4] Under Nasdaq's Rules, a Managed Fund Share is a security that (a) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. *See* Nasdaq Rule 5735(c)(1).

[5] *See* Notice, *supra* note 3, 78 FR at 16017.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). *See* Post-Effective Amendment No. 15 to Registration Statement on Form N–1A for the Trust, dated December 14, 2012 (File Nos. 333–174332 and 811–22559) (''Registration Statement''). In addition, the Exchange represents that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Order'').

[7] Nasdaq Rule 5735(g) also requires that Adviser personnel who make decisions regarding the Fund's portfolio be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

regarding access to information concerning the composition and/or changes to the portfolio.[8]

Objectives of the Fund

The Fund's primary investment objective is to provide high current income. The Fund's secondary investment objective is the preservation of capital.

The Fund's Principal Investments[9]

In pursuing its investment objective, under normal market conditions,[10] the Fund will seek to outperform a primary and secondary loan index (as described below) by investing at least 80% of its net assets (plus any borrowings for investment purposes) in ''Senior Loans.'' [11] It is anticipated that the Fund will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the S&P/LSTA U.S. Leveraged Loan 100 Index (''Primary Index'') or the Markit iBoxx USD Leveraged Loan Index (''Secondary Index'').[12] Each of the Fund's Senior Loan investments is expected to have no less than $250 million USD par outstanding.

The Fund will primarily invest in securities (including Senior Loans) rated below investment grade.

The Fund's Other Investments

In addition to the principal investments described above, the Fund may invest in: (1) Fixed-rate or floating-rate income-producing securities (including U.S. government debt securities and investment-grade and below-investment-grade corporate debt securities); (2) preferred securities; and (3) securities of other investment companies registered under the 1940 Act.[13] In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. The Fund may receive equity, warrants, corporate bonds and other similar securities as a result of the restructuring of the debt of an issuer or a reorganization of a senior loan or bond or may acquire such securities together with a high yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives, restrictions and strategies.

The Fund may invest in secured loans that are not first lien loans or in loans that are unsecured. These loans have the same characteristics as Senior Loans except that such loans are not first in priority of repayment and/or may not be secured by collateral.

Fund Investment Limitations

Under normal market conditions, up to 10% of the net assets of the Fund may be denominated in currencies other than the U.S. dollar. The Fund intends to hedge its non-U.S. dollar holdings.[14]

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.[15]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans, and unsecured loans deemed illiquid by the Adviser.[16] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and the Fund will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Except for investments in ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues.[17] The Fund will not invest in options contracts, futures contracts, or swap agreements.[18]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.[19]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[20] and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq's Rule 5735.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[23] which sets

[8] Additionally, the Exchange represents that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[9] Additional information regarding the Fund, the Fund's portfolio, and the Shares, including investment strategies, risks, Senior Loan market, Primary and Secondary Indices, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Notice and in the Registration Statement. *See supra,* notes 3 and 6, respectively.

[10] In the Notice, the term ''under normal market conditions'' is defined and a description of what the Fund may hold during periods of extreme market disturbance is provided. *See* Notice, *supra* note 3, 78 FR at 16007, n.10.

[11] The Adviser considers Senior Loans to be first lien senior business loans that typically pay interest at a floating or adjusting rate that is determined periodically at a designated premium above a base lending rate, most commonly the London-Interbank Offered Rate (''LIBOR''). *See id.* The Fund will invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses operating outside of North America. *See id.* Generally, each Senior Loan will be secured by collateral such as accounts receivable; inventory; equipment; real estate; intangible assets such as trademarks, copyrights and patents; and securities of subsidiaries or affiliates. *See id.* at 16008.

[12] The Primary Index comprises the 100 largest Senior Loans, as measured by the borrowed amounts outstanding; the Secondary Index selects the 100 most liquid Senior Loans in the market. In addition to size, liquidity is also measured, in part, based on the number of market makers who trade a specific Senior Loan and the number and size of transactions in the context of the prevailing bid/offer spread. Markit utilizes proprietary models for the Secondary Index composition and updates to the Secondary Index. The Fund will not seek to track either the Primary or Secondary Index but rather will seek to outperform those indices.

[13] The equity securities in which the Fund may invest, including securities of other investment companies registered under the 1940 Act, will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[14] *See* Notice, *supra* note 3, 78 FR at 16009.

[15] *See id.* at 16010.

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] 15 U.S.C. 78f.

[21] 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).

[22] 17 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1)(C)(iii).

forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges (''UTP'') and the Consolidated Tape Association ''CTA'') plans for the Shares and any underlying exchange-traded product.[24] Intra-day, executable price quotations of the Senior Loans, fixed income securities, and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is also available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The NAV of the Fund will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Fund's NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or the applicable exchange or market on which the Fund's investments are traded) announces an early closing time. On each business day, before commencement of trading in Shares in the Regular Market Session [25] on the Exchange, the Fund will disclose on the Distributor's Web site the identities and quantities of the portfolio of securities and other held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day assets (''Disclosed Portfolio,'' as defined in Nasdaq Rule 5735(c)(2)).[26] The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Additionally, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

Trading in Shares will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[27] The Adviser is affiliated with a broker-dealer and has implemented a firewall with respect to that broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.[28] The Exchange has represented that S&P and Markit are not broker-dealers or affiliated with a broker-dealer and that each has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index and Secondary Index, respectively.[29]

Under normal market conditions, the Fund generally will satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase. The Exchange states that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. Further, the Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[30] The Commission believes that the Exchange's procedures, combined with the Fund's general adherence to the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase are designed to mitigate the potential for price manipulation of the Shares.

In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5735.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[31]

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[24] *See* email from Jonathan F. Cayne, Associate General Counsel, The NASDAQ OMX Group, to Christopher Chow, Special Counsel, and Kristie Diemer, Special Counsel, Division of Trading and Markets, Commission, dated April 25, 2013, stating that quotation and last-sale information will be available in accordance with the UTP and the CTA plans for the Shares and any underlying exchange-traded products, as well as via Nasdaq proprietary quote and trade services.

[25] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[26] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[28] *See* note 7, *supra* and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above

[29] *See* Notice, *supra* note 3, 78 FR at 16018.

[30] *See id.* at 16017.

[31] *See id.*

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.[32]

(6) It is anticipated that the Fund, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the Primary or the Secondary Indices. Each of the Fund's Senior Loan investments is expected to have no less than $250 million USD par outstanding. While the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund, the Adviser does not intend to purchase Senior Loans that are in default.

(7) Under normal market conditions, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase.

(8) The Fund will not invest in non-U.S.-registered equity issues (except for underlying ETFs that may hold non-U.S. issues). The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans, and unsecured loans deemed illiquid by the Adviser. The Fund will not invest in options contracts, futures contracts, or swap agreements.

(9) The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading. This approval order is based on all of the Exchange's representations, including those set forth in the Notice.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[33] and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NASDAQ–2013–036), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10345 Filed 5–1–13; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* 17 CFR 240.10A–3.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69467; File No. SR–ISE–2013–15]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change To Amend the Obvious and Catastrophic Errors Rule

April 26, 2013.

I. Introduction

On February 26, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 720, Obvious and Catastrophic Errors. The proposed rule change was published for comment in the **Federal Register** on March 14, 2013.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 720 relating to obvious error and catastrophic error rules by: (1) Providing that, in the case of both obvious and catastrophic errors, the Exchange will nullify trades for transactions involving Priority Customers[4] and adjust trades where none of the parties to the trade are Priority Customers; and (2) harmonizing the procedure for making obvious and catastrophic error determinations.

Erroneous Transactions Involving Priority Customers

Under current Rule 720(b)(2), the Exchange nullifies obvious error transactions unless all parties to the trade are ISE market makers, in which case the Exchange adjusts the price of the transaction. With respect to catastrophic errors, the Exchange currently adjusts all transactions even if they involve non-market makers.[5]

The Exchange proposes to amend its obvious and catastrophic error procedures to allow the Exchange to nullify trades that qualify as either an obvious error or a catastrophic error if such trades involved a Priority Customer and adjust trades where none of the parties to the trade are Priority Customers (*i.e.,* market makers, broker-dealers and professional customers). Specifically, the Exchange proposes to amend Rule 720(b)(2)(ii) and adopt new Rule 720(c)(2)(B),[6] which states that where at least one party to the obvious or catastrophic error is a Priority Customer, the trade will be nullified by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69085 (March 8, 2013), 78 FR 16338 (''Notice'').

[4] ISE Rule 100(a)(37A) defines ''Priority Customer'' as a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[5] *See* ISE Rule 720(d)(3).

[6] This proposed rule change also realigns certain parts of Rule 720. The rule on Catastrophic Error Procedure rule was previously found in Rule 720(d) and with the proposed realignment, this rule now appears as Rule 720(c).

Market Control[7] unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Market Control of its determination. The Exchange believes that this proposal provides a fair way to address the issue of a trade executing through a customer's limit order price while balancing the competing interests of certainty that trades stand with the policy concerns about dealing with true errors.

Determination of Erroneous Transactions

Under Rule 720(b)(2), Market Control determines whether an obvious error has occurred and applies the rule to adjust or nullify trades with the ability for those parties affected to request that a panel of members review decisions made by Market Control. With respect to catastrophic errors, Rule 720(d)(2) currently requires that a panel of members make the initial determination of whether a catastrophic error occurred rather than Market Control.

The Exchange proposes to amend the catastrophic error procedure to provide that Market Control shall make the initial determination of whether or not a catastrophic error has occurred. The Exchange's proposed procedure would allow parties affected by an action taken by Market Control the ability to request that such actions be reviewed by a member panel, rather than requiring a member panel to make the initial determination in all cases. The Exchange's proposed rule also sets forth the steps that Market Control shall take if a determination has been made that a catastrophic error has occurred.[8]

The Exchange also proposes to rearrange parts of Rule 720. Specifically, the Exchange proposes to delete Rule 720(c) (Obvious Error Panel) and move the substance of that rule to new Rule 720(d), which is also renamed Review Panel, and which will now apply to both obvious and catastrophic errors. Proposed Rule 720(d) will provide the composition of the Review Panel,[9] the scope of the Review Panel's review,[10] the procedure for requesting review,[11] and the decisions of the Review Panel.[12]

[7] Market Control consists of designated personnel in the Exchange's market control center. *See* ISE Rule 720(a)(3)(ii).

[8] *See* Proposed Rule 720(c)(2).

[9] *See* Proposed Rule 720(d)(1).

[10] *See* Proposed Rule 720(d)(2).

[11] *See* Proposed Rule 720(d)(3).

[12] *See* Proposed Rule 720(d)(4). The Exchange is also proposing conforming amendments to Supplementary Material .01, .02, .03 and .04 to Rule 720 to reflect the proposed rule changes.

III. Discussion

The Commission has carefully considered the proposed rule change and 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] in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.[15]

In the filing, the Exchange notes its belief that the proposed rule change relating to nullifying trades involving Priority Customers and adjusting trades where none of the parties are Priority Customers will help market participants better manage their risk associated with potential erroneous trades. The Exchange notes that the proposed rule change is not unfairly discriminatory, even though it offers some market participants a choice as to whether a trade is nullified or adjusted, while other market participants will continue to have all of their obvious and catastrophic errors adjusted. Specifically, the Exchange notes that the existing rules differentiate among market participants.[16] The Exchange notes further that options rules often treat Priority Customers in a special way,[17] recognizing that Priority Customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. The Exchange goes on to note that, while the proposed rule change may introduce uncertainty regarding whether a trade will be adjusted or nullified, it eliminates price uncertainty, as customer orders can be adjusted to a significantly different price than their limit order price under the rule prior to this proposed rule change. Ultimately, the Exchange believes differentiating among market participants by permitting Priority Customers to have a choice as to whether to nullify a trade involving an obvious or a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide Priority Customers with additional options to protect themselves against the consequences of obvious and catastrophic errors.

The Commission notes that in considering the proposed rule change, the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to other market participants such as market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a Priority Customer. The proposed rule change takes an approach similar to the one taken in the Exchange's existing obvious error rule, whereby transactions in which an obvious error occurred with at least one party that is not an Exchange market maker are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the obvious error.

Further, the Commission believes that the proposed rule change relating to Market Control making the determination of whether a catastrophic error has occurred will promote just and equitable principles of trade by adding certainty and more consistency to the current rule. The Exchange noted that, in its experience, the procedure of requiring a member panel to make the initial determination of whether or not a catastrophic error has occurred in all cases is inefficient and unnecessary. The Exchange stated that its obvious and catastrophic error rule and the procedures that carry out the rule have consistently been based on specific and objective criteria. The Exchange noted that this proposal furthers that principle by adopting objective guidelines for the determination of which trades may be nullified or adjusted, and for the determination of whether or not a trade is deemed to be a catastrophic error. For the reasons noted above, the Exchange believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the

[13] In approving the 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] 15 U.S.C. 78*o*–4(b)(2)(C).

[16] The Exchange notes, for example, that the notification period to begin the obvious error process is different for Exchange market makers and non-market makers and whether a trade is adjusted or busted also differs.

[17] For example, many options exchanges priority rules treat Priority Customer orders differently and some options exchanges only accept certain types of orders from Priority Customers. Most options exchanges also charge different fees for Priority Customer orders.

[18] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–ISE–2013–15) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10346 Filed 5–1–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69468; File No. SR–CBOE–2013–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Rule 6.74(b) That Sets Forth Expired SizeQuote Mechanism Pilot Program

April 26, 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 April 25, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to delete Rule 6.74(f) that sets forth the SizeQuote Mechanism pilot program because this pilot program expired on February 15, 2008. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to delete Rule 6.74(f) that sets forth the open outcry SizeQuote Mechanism program, which was approved on a pilot basis in February 2005 and was expanded to include solicited orders in January 2006. The SizeQuote Mechanism pilot program was extended twice and expired on February 15, 2008.[5]

In connection with the March 18, 2013 launch of mini-options, the Exchange amended, among other rules, Rule 6.74(f) to establish a minimum eligible order size for mini-options in an amount proportional to the minimum eligible order size that is required for standard options (*i.e.,* not less than 250 standard option contracts delivering 100 shares and not less than 2,500 for mini-option contracts delivering 10 shares).[6] In that filing, the Exchange deleted obsolete rule text from Rule 6.74(f)(i) that referenced that the SizeQuote Mechanism pilot program had expired on February 15, 2008. The Exchange believes that the entirety of 6.74(f) should be deleted since the SizeQuote Mechanism pilot program has expired, the rule text language is obsolete and to eliminate confusion as to availability of the SizeQuote Mechanism pilot program that may arise if the language remains in Rule 6.74(f).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[7] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and market participants would benefit from Rule 6.74(d) being deleted because it sets forth the SizeQuote Mechanism pilot program that expired on February 15, 2008 and therefore contains obsolete and outdated rule text. If the current rule text language remains, confusion could arise as to whether the SizeQuote Mechanism pilot program is currently available. Because CBOE did not to renew and/or revise or seek to make the SizeQuote Mechanism pilot program permanent, CBOE believes that it is appropriate to delete the obsolete rule text that references the SizeQuote Mechanism pilot program which expired on February 15, 2008.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed to delete obsolete rule text language that sets forth the expired SizeQuote Mechanism pilot program in Rule 6.74(d). Since all market participants cannot currently utilize the expired SizeQuote Mechanism pilot

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 51205 (February 15, 2005), 70 FR 8647 (February 22, 2005) (approving SR–CBOE–2004–72 on a pilot basis through February 15, 2006); 53135 (January 17, 2006), 71 FR 3908 (January 24, 2006) (approving SR–CBOE–2005–83, which modified the pilot program); 53252 (February 8, 2006), 71 FR 8012 (February 15, 2006) (immediately effective proposal, SR–CBOE–2006–05, extending the pilot program from February 15, 2006 to February 15, 2007); and 55174 (January 25, 2007), 72 FR January 31, 2007 (immediately effective proposal, SR–CBOE–2007–07, extending the pilot program from February 15, 2007 to February 15, 2008).

The expired pilot program provided a process by which a Floor Broker (using his/her exercise of due diligence to execute orders at the best price(s)) could execute and facilitate large-sized orders in open outcry. The Exchange issued a Regulatory Circular announcing the expiration of the SizeQuote Mechanism Pilot, which was no longer operative after February 15, 2008. *See* CBOE Regulatory Circular *RG08–028* (Expiration of SizeQuote Mechanism Pilot).

[6] *See* Securities Exchange Act Release No. 69235 (March 25, 2013), 78 FR 19552 (April 1, 2013) (notice of filing and immediate effectiveness of SR–CBOE–2013–036).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

program, the rule change will not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] 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–CBOE–2013–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2013–046 and should be submitted on or before May 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10353 Filed 5–1–13; 8:45 am]

BILLING CODE 8011–01–P

[9] The Exchange has fulfilled this requirement.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8309]

Culturally Significant Objects Imported for Exhibition Determinations: ''Koloman Moser''

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 objects to be included in the exhibition ''Koloman Moser,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, NY, from on or about May 23, 2013, until on or about September 2, 2013; the Museum of Fine Arts, Houston, TX, from on or about September 25, 2013, until on or about January 12, 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 objects, 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: April 29, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–10398 Filed 5–1–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8305]

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

(U) Pursuant to the authority vested in me as Deputy Secretary of State, including by section 7086(b)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Pub. L. 112–74, Div. I), as carried forward by the Continuing Appropriations Act, 2013, the Delegation of Authority in the President's Memorandum of July 21, 2010, and Department of State Delegation of Authority No. 245–1, I hereby determine and certify that the Palestinians have not, since the date of enactment of that Act, obtained in the UN or any specialized agency thereof the same standing as member states or full membership as a state outside an

agreement negotiated between Israel and the Palestinians, and waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, Title X.

(U) This waiver shall be effective for a period of six months.

(U) This determination shall be reported to the Congress promptly and published in the **Federal Register**.

Dated: April 10, 2013.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2013–10399 Filed 5–1–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8306]

Waiver of Restriction on Assistance to the Central Government of the Dominican Republic

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to the Dominican Republic and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to Congress, and the determination shall be published in the **Federal Register**.

Dated: April 6, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2013–10397 Filed 5–1–13; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 8307]

Waiver of Restriction on Assistance to the Central Government of Suriname

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Suriname and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to Congress, and the determination shall be published in the **Federal Register**.

Dated: December 6, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2013–10396 Filed 5–1–13; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2013–0074]

Request OMB Clearance for Extension of a Currently Approved Information Collection, Foreign Air Carrier Application for Statement of Authorization

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Department of Transportation, Office of the Secretary invite the general public, industry and other governmental parties to comment on the Foreign Air Carrier Application for Statement of Authorization. The pre-existing information collection request previously approved by the Office of Management and Budget (OMB) expires on September 30, 2013.

DATES: Written comments should be submitted by June 25, 2013.

FOR FURTHER INFORMATION CONTACT: Darren Jaffe, (202) 366–2512, Office of International Aviation, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W86–441, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

ADDRESSES: You may submit a comment to Docket No. DOT–OST–2013–0074 through one of the following methods:

Web site: http://www.regulations.gov. Follow the instructions for submitting comments on the FDMS electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

Hand Delivery: 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 Wednesday and Federal Holidays.

Instructions: All comments must include the agency name and FDMS Docket No. DOT–OST–2013–0074. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on February 3, 2006 (71 FR 5780), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket No. DOT–OST–2013–0074. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and to ensure their timely receipt at U.S. DOT.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2106–0035.

Title: Foreign Air Carrier Application for Statement of Authorization.

Form No.: Form OST 4540.

Type of Review: Extension of a currently approved collection.

Respondents: Foreign Air Carriers.

Number of Respondents: approximately 100.

Estimated Time per Response: 2.25 hours per application.

Total Annual Burden: 1,000 hours.

Abstract: Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR part 212. The form requires basic information regarding the carrier(s) conducting the operation, the party filing the form, the operations

being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government. DOT analysts will use the information collected to determine if applications for fifth-freedom operations meet the public interest requirements necessary to authorize such applications.

Burden Statement: We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes. Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the Department's T–100 program to provide this information (under this program, carriers are required periodically to compile and report certain traffic data to the Department, as more fully described in the Docket referenced in footnote 1 below). The Bureau of Transportation Statistics (BTS) provide carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data, to be used in making the carriers' T–100 submissions.[1] We estimated that carriers will require 1.25 hours per application [2] to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland government will afford reciprocity to U.S. carriers seeking authority for the similar fifth-, sixth- and seventh-freedom operations. Carriers may cite certifications submitted by carriers from the same homeland if that homeland issued such certification within the preceding six-month period. Approximately 100 carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign carrier from any given homeland will expend roughly 4 hours every six-months to obtain certification from its homeland governments.[3] We have apportioned 30 minutes to each application to account for the time required to obtain certifications from homeland governments.

We have no empirical data to indicate how much time is required for a person to complete OST Form 4540; however, anecdotal evidence reveals that respondents spend thirty (30) minutes or less completing the form and brief justification. In some cases, respondents spend a limited amount of time, less than ten (10) minutes, reviewing the form before sending it via facsimile or email to the Department. In the interest of providing a conservative estimate so as to not understate the burden hours, we estimate the hour burden for completing OST Form 4540 as thirty (30) minutes.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the Office of the Secretary's performance; (2) the accuracy of the estimated burden; (3) ways for the Office of the Secretary to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

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.

Issued in Washington, DC, on April 26, 2013.

Paul Gretch,

Director, Office of the International Aviation.

[FR Doc. 2013–10419 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–9X–P

[1] The rule-making associated with the T–100 program can be found on the Federal Docket Management System (FDMS) at *http://www.regulations.gov*, in Docket DOT–OST–1998–4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X–50).

[2] The Office of Aviation Analysis (X–50) estimated that small-carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and report T–100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.

[3] Calculation: (4 burden hours per application) × (30 foreign homelands) × (2 requests per year) = 240 annual burden hours. Apportioning 240 annual burden hours equally among an average of 430 applications annually = approximately 30 burden minutes per application.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending April 20, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT-OST–2013–0082.

Date Filed: April 17, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 8, 2013.

Description: Joint application of American Airlines, Inc., US Airways, Inc., American Eagle Airlines, Inc., PSA Airlines, Inc. and Piedmont Airlines, Inc. (collectively, the ''Joint Applicants'') requesting approval of the de facto route transfer of US Airways', PSA's, and Piedmont's route authority to AA/Eagle, and the reissuance of the route authorities of all the carriers in order to comply with the applicable aviation statutes.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–10308 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–9x–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Guidance on FMCSA's Publication: Your Rights and Responsibilities When You Move

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA provides a streamlined and more user-friendly

version of its *Your Rights and Responsibilities When You Move* consumer protection publication. Household goods motor carriers (movers) and brokers may provide this document to individual shippers in lieu of the longer version currently in use.

DATES: This guidance is effective as of May 2, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, FMCSA Household Goods Enforcement and Compliance Team Leader, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, (202) 366–8045.

SUPPLEMENTARY INFORMATION: May marks the start of the summer moving season. Thousands of households nationwide will be contemplating or arranging for the interstate transportation of household goods. Although this time is exciting for many households, it can also be a stressful time during which unscrupulous movers and brokers attempt to take advantage of individuals' vulnerabilities and lack of experience.

To better inform individual households of their rights and responsibilities when planning an interstate move and help prevent them from becoming victims of moving fraud, FMCSA makes consumer protection information available to the public on its Web site: *www.protectyourmove.gov*. FMCSA also requires all interstate household goods movers and brokers to provide prospective customers with a copy of or an electronic link to two consumer protection publications: *Ready to Move?—Tips for a Successful Interstate Move* and *Your Rights and Responsibilities When You Move* (*see* 49 CFR 375.213).

Effective today, FMCSA makes available a streamlined and more user-friendly version of *Your Rights and Responsibilities When You Move* at *http://www.protectyourmove.gov/consumer/awareness/rights/rights.htm*. Movers and brokers may elect to use either the longer version currently in use (*see* 49 CFR part 375, Appendix A) or the new streamlined version made available today on FMCSA's Web site. FMCSA intends to publish a **Federal Register** notice of proposed rulemaking at a later date soliciting comments on the new streamlined *Your Rights and Responsibilities When You Move* booklet. In the interim, and until FMCSA provides further notice, movers and brokers may provide prospective customers with either version in accordance with today's guidance. FMCSA will not take enforcement action against household goods motor carriers and brokers that distribute or link to the streamlined version in lieu of the longer version, so long as they otherwise comply with the requirements of 49 CFR 375.213.

Issued under the authority of delegation in 49 CFR 1.87: April 23, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–10276 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. RITA–2013–0003]

Notice of Request for Clearance of a New Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the Nation's ferry operations. The information collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will be published by BTS on the BTS Web page.

DATES: Comments must be submitted on or before July 1, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA–2013–0003 and OMB control number 2139–0009 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, U.S. Department of Transportation, 1200 New Jersey Ave SE., West Building, Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket RITA–2013–0003.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal Rulemaking Portal: *http://www.regulations.gov*.

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/*.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steve, (202) 366–4108, NCFO Project Manager, BTS, RITA, Department of Transportation, 1200 New Jersey Ave. SE., Room E34–431, Washington, DC 20590. Office hours are from 9:00 a.m. to 6:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Background: The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59, Section 1801(e)) required the Secretary, acting

through the BTS, to establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

This same legislation also required biennial updating of the database. BTS conducted the first Census of Ferry Operators in 2006, 2008 and again in 2010. Recently enacted MAP–21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)], continues the BTS mandate to conduct the NCFO and requires that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds ($67 million in 2013 and 2014). The funding allocations are based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. The MAP–21 legislation also requires that BTS make additional changes to the NCFO questionnaire to ensure that the resulting database is consistent with the National Transit Database maintained by the Federal Transit Administration (FTA). As a result, BTS has removed census questions that were no longer specifically mandated (e.g., peak boarding times, etc.) and added more detailed items about the core infrastructure of the ferry operations themselves. The overall length of the revised questionnaire remains consistent with that of previous years.

The survey will be administered to the entire population of ferry operators (estimate 260 or less). The survey will request the respondents to provide information such as: The points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), and intermodal connectivity. All data collected in 2013 will be added to the existing NCFO database.

Respondents: The target population for the survey will be all of the approximately 260 operators of existing ferry services in the United States.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer new questions and an additional 10 minutes to review (and revise as needed) previously submitted data.

Estimated Total Annual Burden: The total annual burden (in the year that the survey is conducted) is estimated to be approximately 130 hours (that is 30 minutes per respondent for 260 respondents equals 7,800 minutes).

Frequency: This survey will be updated every other year.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1207(c), The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Pub. L. 109–59, Moving Ahead for Progress in the 21st Century Act (MAP–21) Pub. L. 112–141 and 49 CFR 1.46.

Issued in Washington, DC, on the 26th day of April, 2013.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2013–10416 Filed 5–1–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35735]

Keenesburg Direct Railroad, LLC—Acquisition and Operation Exemption—J D East, LLC

Keenesburg Direct Railroad, LLC (KDR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from J D East, LLC (JDE), and to operate, approximately 0.16 miles (850 feet) of rail line between the point of connection to the BNSF Railway Company's (BNSF) line at Engineering Switch No. 009951E, approximately 125 feet west of the crossing of BNSF's main line, and Weld County Road 59 and the end of the track, a short distance past Lot 1 of Howser and Timbers Subdivision, in Keenesburg, Weld County, Colo. (the Line). KDR states that there are no mileposts on the Line. KDR also states that there are no interchange commitments between KDR and JDE.

According to KDR, the Line is currently private track. KDR seeks Board authority to acquire the Line from JDE and operate it as a common carrier, providing rail service to the general public.

The earliest the transaction can be consummated is May 16, 2013, the effective date of the exemption (30 days after the exemption was filed).

KDR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 9, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35735, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 29, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–10459 Filed 5–1–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Re-pricing of Several Silver Coin Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: Because of the recent decrease in the market price of silver, the United States Mint is lowering the price of several numismatic products that contain silver coins, as follows:

2013 American Eagle One Ounce Silver Proof Coin—$57.95.

2013 American Eagle One Ounce Silver Uncirculated Coin—$48.95.

2012 America the Beautiful Five Ounce Silver Uncirculated Coin™—Chaco Culture National Historical Park, New Mexico—$179.95.

2012 United States Mint Annual Uncirculated Dollar Coin Set—$49.95.

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: April 26, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–10390 Filed 5–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

SUMMARY: The Department of Veterans Affairs (VA) provides notice that it intends to conduct a recurring computer-matching program matching Social Security Administration (SSA) Master Beneficiary Records (MBR) and Self-Employment Income System (MEF) with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries who are receiving VA benefits and SSA benefits or earned income, and to reduce or terminate VA benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register** (FR), or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Nicely, Pension Analyst, Pension and Fiduciary Service (21P), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 632–8863.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by beneficiaries in VA's needs-based benefit programs and adjust VA benefit payments as prescribed by law.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for benefits, or verifying other information with respect to payment of benefits.

The VA records involved in the match are in ''Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22/28),'' a system of records which was first published at 41 FR 9294 (March 3, 1976), amended and republished in its entirety at 77 FR 42593 (July 19, 2012). The routine use is number 39 regarding computer matches. The SSA records consist of information from the system of records identified as the SSA MBR, SSA/ORSIS, 60–0090, routine use number 23 and SSA MEF, SSA/OEEAS, 60–0059, routine use numbers 15 and 25.

In accordance with the Privacy Act, 5 U.S.C. 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Approved: March 26, 2013.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–10428 Filed 5–1–13; 8:45 am]

BILLING CODE 8320–01–P

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Federal Register

Vol. 78, No. 85

Thursday, May 2, 2013

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MAY

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CFR PARTS AFFECTED DURING MAY

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S. 716/P.L. 113–7
To modify the requirements under the STOCK Act regarding online access to certain financial disclosure statements and related forms. (Apr. 15, 2013; 127 Stat. 438)
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